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Canada
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

APR 27 1950

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ROYAL COMMISSION ON TRANSPORTATION

Ottawa, Thursday,
April 27, 1950
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
THURSDAY,
APRIL 27, 1950.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - Chairman.
HAROLD ADAMS INNIS - Commissioner.
HENRY FORBES ANGUS - Commissioner.

- - - - -

G. R. Hunter, Secretary. P. L. Belcourt, Asst.Secretary.

- - - - -

COUNSEL APPEARING:

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N. J. MacMillan,		
H. C. Friel, K.C.		
C.F.H.Carson, K.C.	}	Canadian Pacific Railway
F.C.S.Evans, K.C.		
K.D.M.Spence		
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J. Paul Barry)	Province of New Brunswick
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M O R N I N G S E S S I O N

OTTAWA, ONTARIO
APRIL 27, 1950.

THE CHAIRMAN: Yes, Mr. Evans.

MR. EVANS: I have three matters that I should like to mention very shortly. One is that Mr. Frawley, in his cross-examination of Mr. Norman at page 20712, Volume 114, that is yesterday - -

THE CHAIRMAN: Speak a little louder, please, Mr. Evans.

MR. EVANS: Yesterday Mr. Frawley in his cross-examination of Mr. Norman said, with reference to the figure of \$17,046,000 which Mr. Norman gave as the cost to the Canadian Pacific of its holdings of Smelter stocks, that he had never seen that figure before or had it been brought it to the attention of the Commission or the Board of Transport Commissioners. I have referred Mr. Frawley, and I should like to refer the Commission, to Exhibit 254 in the 21 Per cent Case and also the particulars furnished to Provincial Counsel in the 20 Per cent Case. when that figure was given, in both cases.

Then with regard to the undertaking that I gave yesterday that I would ascertain whether the Canadian Pacific had ever expressed opposition to the idea of income bonds as a part of a recapitalization of the

Canadian National, I have had a very careful search made and I can find no occasion on which the Canadian Pacific ever took a position in opposition to the proposal made by Mr. Vaughan in 1946 or in fact at any time in connection with an income bond solution for their

recapitalization.

Then Mr. O'Donnell a couple of days ago asked us to check a figure he had obtained with regard to what additional increase would be required to produce a figure of \$66.6^{million} of earning power which Mr. Northey Jones felt was the proper level. I have checked the calculation of and I find that a 24% increase, as Mr. O'Donnell suggested, would be required on the following assumptions --

THE CHAIRMAN: Twenty-four per cent over what?

MR. EVANS: Over what Mr. O'Donnell used. I am going to come to that, my lord.. The assumptions are these. First, 24% is applied on top of the 16 and not on top of the 20. The significance of that is that the Board's form found we are entitled to 20% today. So that the difference between the present Board formula and the \$66.6^{million} should be found by reference to the difference between not 16% but 20% and whatever is required, rather than on top of the 16; because 16 does not give us what the present formula says we are entitled to. So that the first assumption is that 24% would be required on top of the 16%, not on top of the 20. The second assumption is that it is applied to \$66.6^{million} and not \$63 million which Mr. Northey Jones used. The third is that it should not be applied to competitive rates.

THE CHAIRMAN: Not be applied to what?

MR. EVANS: To competitive rates, none of it. I have some other figures worked out and I can say this to the Commission. Using \$63 million, and if we could apply it to the grain rates and competitive rates^{to} on top of the 20%, it would require a further increase of 10%. If we could not apply it to the grain rates

but could apply it to the competitive rates -- I am not saying that it should be applied to all of them -- but if it were applied to the competitive rates and we did not apply it to the grain rates, on top of the 20% the further increase would be 12%.

THE CHAIRMAN: On top of the 20?

MR. EVANS: On top of ^{the} 20. Assuming that we are not applying it to even competitive rates.

THE CHAIRMAN: Even to what?

MR. EVANS: Even to competitive rates, ~~the~~ figure will be in the neighborhood of ^a 14% increase to get \$63 million.

THE CHAIRMAN: In that case you would apply it to what?

MR. EVANS: On top of the 20 in every case.

THE CHAIRMAN: Is ~~that~~ on application to both ~~it~~ ~~the~~ rates?

MR. EVANS: No. The last figure would be not applying it to competitive rates and not grain. If we applied it to competitive rates and not grain it is 12%. But if we apply it to competitive rates and grain rates it is 10%.

MR. MacPHERSON: I would point out that we have in the course of the Commission referred to the 21% Case, the 30% Case, the 8% Case the 16% Case and so on; and in each instance that was the percentage that was allowed, the horizontal increase that was allowed, not regarding grain rates at all. Consequently I am suggesting that the 24% is the figure that might reasonably be taken having regard to the evidence that there is with regard to the competitive rates.

MR. EVANS: Oh, no. It has nothing to do with that at all. The difficulty with the 24% is, first, that it applies to \$66 million and, second, that it assumes that the existing formula of 16% is all that the formula provides. We say that the present formula provides 20% and if you want to find out what additional increase would be required by this new approach, we should apply the calculations to the assumption that we are going to get what the present formula provides, namely 20%.

MR. O'DONNELL: All I was interested in, of course, my lord, was in having a figure as to the additional increases which would be needed over what had presently been granted by the Board of Transport Commissioners. I used the very figures that Mr. Northey Jones used using that \$66.6 million I said to him, all other things being constant and the rates presently in force being those upon which the computation is to be made, it would require, on my instructions, a 24% further increase to give you the \$66.6.

THE CHAIRMAN: And he has reduced that figure to \$63?

MR. O'DONNELL: That figure later was given. The only two figures I was taking were those which were in his Brief at page 18. I was not interested in the other issue. I just took the low figure he gave and the top figure he gave and I applied the increase to those. As far as I am concerned, what Mr. Evans says is quite satisfactory for my purposes.

MR. COURTLAND ELLIOTT - RecalledCROSS-EXAMINATION BY MR. FRAWLEY -Resumed:-

Q. Suppose we take Mr. Evans's three assumptions which he has just given us, that Mr. O'Donnell's figure of \$66.6 million will require a 24% increase -- I should perhaps say Mr. Northey Jones's figure of \$66.6 million -- or would require an increase in freight rates in this country of 24% upon the following assumptions, ~~first, that the~~ ^{first, that the} 24% is put on top of the 16% which is at the moment what the Transport Board has authorized; and second, that it applied to the \$66.6 rather than that lesser figure of \$63 million; and third, that it be not applied to competitive rates. I ask you whether you have any ^{whether} views at all/or not that would be a fair thing to do to Western Canada to put in an increase of that kind and of that amount?

A. Mr. Frawley, I would have no opinion as to the fairness of the change in the rates. I have pointed out that from my standpoint the net revenues of the railroads can be improved not only by reference to freight rates, but also by a reference to the changing volume and character of the traffic and the changing volume of costs. If you ask me if it is fair, I cannot give you an answer. All I can say is, that in the light of historical experience, there is always a resistance to rising prices on the part of those who have to pay them. We have had sufficient experience after two wars I think to come to the conclusion that these advanced prices and rates, wherever they may be imposed, have to be sustained.

Q. Mr. Elliott, you yourself, in your submission, said that you took a detached view of this matter?

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES

The following is a list of the names of the

persons who have been elected to the

office of President of the United States

from the year 1789 to the present time.

The first President of the United States

was George Washington, who was elected

in 1789 and served for four years.

He was followed by John Adams, who

served from 1797 to 1801.

Thomas Jefferson was elected in 1801

and served for two terms.

James Madison was elected in 1809

and served for two terms.

James Monroe was elected in 1817

and served for two terms.

John Quincy Adams was elected in 1825

and served for one term.

Andrew Jackson was elected in 1829

and served for two terms.

Martin Van Buren was elected in 1837

and served for one term.

William Henry Harrison was elected in 1840

and served for one term.

John Tyler was elected in 1841

and served for one term.

James K. Polk was elected in 1845

and served for one term.

Franklin Pierce was elected in 1853

and served for one term.

James Buchanan was elected in 1857

A. Yes; very much so.

Q. Yes.

A. I am under no instructions from the C.P.R. whatsoever; in anything I have to say, I am completely impartial and independent.

Q. It is only because you said that that I wanted to just appeal to this detached sense in which you view it. I am assuming that. You are aware, in general, of the fact that the traffic to ^{western.} Canada and from western Canada to eastern Canada is, by and large, on the non-competitive basis?

A. Yes.

Q. All right. You are aware that, by and large, the traffic moves in southern Ontario and Quebec at competitive rates?

A. Yes.

Q. I simply put this to you, Mr. Elliott, you having given some study to Canada's railway problem, I suppose?

A. Modest.

Q. I put to you whether or not you think it is been an unthinkable thing to put a freight rate of 24 percent into effect in Canada today when the large body of rates which the people of Ontario and Quebec enjoy could not take that increase. I ask you as a detached citizen of this country what you think about that?

A. Not being an expert in these matters, I would say that every effort should be made to avoid freight rate increases until they can no longer be avoided. As to the constituents of how the rates are to be changed, I must tell you very sincerely I have no expert views whatsoever.

MR. FRAWLEY: I just want to say one word and

then continue with my cross examination of Mr. Elliott.

I want to comment on what Mr. Evans said this morning as to what I said yesterday at page 20712.

THE CHAIRMAN: Is that about the C.P.R.?

MR. FRAWLEY: Yes. I just want to say a word because I do not need to say to your lordship that when I said that I had never seen that figure before, I meant just that. If it had been placed in the record, then I probably saw it, but I certainly was not aware that I had seen it. I only want to recall again to your lordship's mind that what I was talking about yesterday was the make-up. It is true that I said, that that figure, which means the result figure of \$17,000,000 in 1946--I am not getting away from that at all -- was one that I had not seen before. I went further and said that it had not been brought to the attention of the Commission. I suppose what I meant was, that as far as I knew, it had not been brought to the attention of this Commission, or to the attention of the Board of Transport Commissioners. My friend Mr. Elliott tells me it is brought to the attention of this Commission and ^{that of} to the Board of Transport Commissioners. I accept that. I still have the same view. ^{I am} in your lordship's hands, and I bow to your ruling, subject to what I might say later. I thought if we had the \$17,000,000 figure we might easily have seven or eight other figures which go to make up the \$17,000,000.

(Page 20875 follows)

THE CHAIRMAN: The \$17,000,000 represents money paid for shares in this company.

MR. FRAWLEY: That is right, my lord; and they probably paid for it at various times, and they paid various prices, and there is nothing amazing about it. They just paid different prices for the stock, and it all added up to \$17,000,000.

Q. Now, Mr. Elliott, you said something at page 9 that has bothered me a little bit, as to what the implications are, and I want to call it to your attention. You say at the bottom of page 9:

"If the financial position is to be recast, it should be done after making proper allowance for the fact that the position of that railway...." that is the Canadian National, isn't it? --

"can be substantially improved by the correction of the imbalance between rates and costs, and by the long-term growth of Canada." When you say the position, you mean the present position, the position as we see it in the Annual Report. Now, the position of the Canadian National at the moment, which you say is what we are talking about, is that it is required to find \$24.3 million for interest on funded debt in the hands of the public, and \$21.7 million for interest on government loans. It must find that money each year out of that net income it can earn available for that purpose. Now, Mr. Elliott, do you mean to say that by correcting the imbalance between rates and costs, the Canadian National in the foreseeable future can overcome that \$44 million of fixed charges?

A. I would not regard it, Mr. Frawley, as an impossibility that there can be -- there can be; I have not said there will be -- there can be a substantial

correction of the imbalance if the character and volume of traffic changes, if there are changes in freight and passenger rates, if there are new advantages taken of the mechanical devices ---

THE CHAIRMAN: Q. Of the what

A. Mechanical devices and automatic devices and dieselization and other methods of reducing costs. That would be merely a continuation of a process, as I see it, that has been going on for the last fifty years or more.

THE CHAIRMAN: Pardon me, Mr. Frawley.

Q. Does that mean the policy of increasing freight rates and decreasing costs at the same time?

A. Yes, sir.

MR. FRAWLEY: Q. Just to compare those two things, we talked about that yesterday, and you did not venture to suppose that dieselization or economies otherwise -- because that is all it amounts to, is the dieselization and other kinds of economies, and the dieselization economies at the moment are X, a question mark, are they not? Nobody has said --

A. Well, I am not an expert on that. I have understood that they are closing up steam plants because the economies are so apparent.

Q. That is true. We have not got them yet in Canada, because we have not got any diesels yet to speak of; that is a fair statement, isn't it?

A. Montreal Locomotive is just closing up to make nothing but diesels.

Q. That is true; but at the moment on our long lines in Canada we have practically no diesels at all.

A. My observation as a layman is that there are very few diesels, comparatively speaking.

COMMISSIONER ANGUS: Q. Mr. Elliott, would not the circumstances that we have just been speaking of improve the position of the Canadian Pacific commensurately with that of the Canadian National?

A. If they take the same advantage of the same opportunities, sir, I think the results would be commensurate.

Q. And would that, if the results exceeded the requirements of the fair rate of return on the rate base, lead to a reduction in freight rates?

A. I would think that any large business to-day operates in the hope that its rates ^{at least} cannot be held down and if possible reduced, that the experience of business men is that they hope that we can buy a cheaper piece of automobile per dollar, a cheaper piece of radio per dollar, a cheaper piece of freight service per dollar, year by year.

Q. And if that reduction in the freight rates took place, would it not decrease the advantages of the Canadian National from these circumstances?

A. I perhaps do not understand that question exactly.

Q. Simply this: if the general prosperity of Canada leads to increased earnings for both railways, and the earnings for the Canadian Pacific, which is used as the yardstick, go above the requirements or a fair rate of return on the investment, as it may be, one would expect the Board of Transport Commissioners to have a freight rate revision downwards, and I think you agree. Now, if that took place would it not destroy the improved position or in part destroy the improved position that you said would accrue to the Canadian National Railways?

A. To the extent that the reduction in freight rates reduced the net operating profits of the Canadian National Railways or of the Canadian Pacific Railway, their net income would thereby be reduced, presumably. In other words, I am saying quite simply that presumably, unless there is a change in the volume of traffic that takes up the reduction in rates, there will be a reduction in the net operating income to the railways.

Q. Would not the rates be reduced until there was a reduction in the net operating income of the railways, if it was too big?

A. Well, if the net operating income of the railroad is too big, then presumably at some point of time, at some point of magnitude, the Board of Transport Commissioners would say, "The Canadian Pacific is making much more than we ever intended from this rate structure. We had better take another look at the rate structure."

Q. Does not all that add up to putting a ceiling on the sort of improvement that can be expected in the earnings of the Canadian National Railways?

A. Put a ceiling, I suppose, on both railroads.

Q. Yes.

A. That is correct.

MR. FRAWLEY: Q. Mr. Elliott, you do say in the fifth last line of your submission that the position of the Canadian National can be substantially improved. I wondered if any particular meaning is to be given to that word "substantially"?

THE CHAIRMAN: Where is that?

MR. FRAWLEY: " . . . that the position of that railway can be substantially improved by the correction of the imbalance between rates and costs. . . ."

Q. You do not really, looking at those fixed charges, expect that the improvement will be to the extent of putting them flat, of overtaking those fixed charges entirely?

A. Well, I think what I have in mind, Mr. Frawley, is this, that on a dollar gross revenue of \$500 million, such as you find in the Canadian National Railways, it takes a relatively small percentage change of \$500 million carried through the net to amount to a substantial improvement.

Q. Now, all I mean to find out, Mr. Elliott, is whether you really mean substantially to the point of being completely successful in overcoming those fixed charges

A. I would not at this moment give up hope that the Canadian National Railway cannot earn its fixed charges.

Q. All right. Now, Mr. Elliott, at least we have your definite view about that; that at least is your definite hope. Now, I put it to you that we now have an objective of the Canadian National overcoming those fixed charges which now sit at about 44 million, having in mind the rest of everything we know about this company, and you look to dieselization and other economies in the system to help overcome that \$44 million of fixed charges. I put it to you, you do not disagree with me when you say, but the large portion of it will have to come from freight rates?

A. I wish I felt qualified to answer that.

Q. But if it does not come from improvements --

A. I would say historical experience would suggest -- I want to be perfectly fair -- historical experience,

which is all I have got to go on, would suggest that if the Canadian National Railway is going to earn this large amount of fixed charges, amounting to \$40 million odd, it is going to come from several sources, and I would be the last in a period such as we have been going through in the last few years, of a depreciating dollar, to suggest that a change upward in freight rates is not one of the means whereby that result will be achieved.

Q. That is right. Now, when you say just one of them, you do not want to leave the impression that it is just going to be a minor factor in achieving that result in your mind?

A. Well, I think I would have to sit down with some of the traffic experts and engineers of these railroads really to come to a satisfactory conclusion such as you want me to come to. I can see the factors, but I cannot see the figures, because I have not sat down to look at them.

Q. I just want to know where to leave your evidence. Are you leaving the impression that you do regard it as a practical thing that the Canadian National, out of what economies it can make, out of what extra business it can get with the very efficient competition of the Canadian Pacific, can overcome those fixed charges without an increase in freight rates? Of course you say, no, you do not mean that; so then you will certainly regard that freight rates will be, shall I say, a very substantial factor in overcoming these \$44 million of fixed charges.

A. It will be a factor, I would say.

Q. And you think that it is quite all right, then, to expect the Canadian people to go on paying freight rates which will enable the Canadian National Railway to

keep on paying \$44 million of fixed charges?

A. That would be in accord with past experience.

THE CHAIRMAN: Q. Mr. Elliott, in several parts of your statement you use the same phrase over again; you call it the imbalance between rates and costs. I take that to mean that, having regard to what costs are, rates are too low; is that what you mean?

A. There is a lag between the rise in rates as compared with the rapid rise in costs.

Q. And that is the condition which exists today, according to you?

A. Yes.

MR. FRAWLEY: Thank you, Mr. Elliott.

THE WITNESS: Thank you, sir.

THE CHAIRMAN: Anybody else?

MR. O'DONNELL: I think, my lord, in so far as I am concerned, Mr. Elliott's submissions consist principally of argument, which I prefer to deal with in that way.

MR. EVANS: No re-examination.

THE CHAIRMAN: Well, thank you, Mr. Elliott. Who is next?

MR. O'DONNELL: I have just some very short evidence, my lord, in connection with the various submissions which you have heard in the last two or three days.

THE CHAIRMAN: And this evidence is intended to answer those submissions?

MR. O'DONNELL: Yes, my lord.

THE CHAIRMAN: Before you go into it, I think it might be as good a time as any to get back to the point where we started from; there was reference made to it yesterday. I refer to the order in council making

certain commitments to this Commission -- paragraph 2, section 3. We must bear in mind that our duty under that is to review the capital structure of the Canadian National Railway Company, in order that we should report, say in our report, whether or not it is advisable to establish and maintain the fixed charges of that company on a basis comparable to other major railways in North America. Now, in your brief on pages 53, 54, 55, and so on, you did deal with the subject on that basis, I think.

MR. O'DONNELL: Yes, my lord.

THE CHAIRMAN: You made a comparison of your railway in respect of fixed charges with that of a number of other railways; you show that your railway is out of line with the others. Since then we have had this more precise submission of yours presented by Mr. Gordon. Can you tell me now that that submission also was made having in view this particular language?

MR. O'DONNELL: Yes, we consider the whole problem is interwoven, and what Mr. Gordon has submitted falls within the purview or the ambit of the Commission's reference.

THE CHAIRMAN: You say, then, that this submission which we have been considering lately would have this effect, that it would put and maintain your fixed charges on a basis comparable to that of the other major railways of North America.

MR. O'DONNELL: That is right, my lord.

THE CHAIRMAN: That is what you say.

MR. O'DONNELL: That is the whole point.

Mr. Cooper.

T. H. COOPER, recalled

EXAMINATION BY MR. O'DONNELL:

Q. Mr. Cooper, Mr. Northey Jones in his statement to the Commission on April 24, on page 18 of that statement, reference to which will be found in the transcript in Volume 112 at page 20446, testified that if the Canadian Pacific is to remain the standard in rate matters and rates are so set that the Canadian Pacific could earn after income taxes an amount somewhere in between \$47,500,000 requirement set for it in the temporary February 28, 1950, judgment of the Board of Transport Commissioners, or a return of 4 3/4 per cent on the approximate billion dollars of capital invested in the railway enterprise, and the \$66,600,000, a return of 6 2/3 per cent, which in the 20% rate case he testified was in his opinion the minimum rate necessary to attract new equity capital to the enterprise, it seems reasonable to suppose that the Canadian National with its larger system and greater gross revenues, should earn at least \$50 million a year before income taxes, and that if the Canadian National were to be recapitalized as proposed earnings of \$50 million a year would leave, after allowing approximately \$15 million of net charges on the railway's net of \$284 million, \$35 million per year surplus earnings. That is set out at page 15 of Mr. Northey Jones' statement. Now, the impression left in my mind was that, because the Canadian National is a larger railway than the Canadian Pacific, after recapitalization the Canadian National net earnings would somehow be greater than those of the Canadian Pacific. Now, I asked you to prepare if you could --

THE CHAIRMAN: Pardon me a moment. You give us this \$50 million, and then what do you say would be

the net?

MR. O'DONNELL: \$35 million per year surplus earnings. If your lordship happens to have Mr. Northey Jones' statement --

THE CHAIRMAN: I have it here.

MR. O'DONNELL: It is page 18, my lord. Those are the figures on page 18 of that statement.

Q. Now, I asked you to prepare, if you could, a statement which would show, putting the two railways on a comparable basis, what the net earnings of each would be after fixed charges and taxes. Have you prepared such a statement?

THE CHAIRMAN: On what hypothesis? If what? What the net earnings of each railway would be if what was done?

MR. O'DONNELL: Well, after fixed charges were -- I asked him to prepare, if he could, a statement --

THE CHAIRMAN: On the footing of the figures that Mr. Northey Jones --

MR. O'DONNELL: Yes, sir, Mr. Northey Jones' figures, that is right, directed to the refutation, in so far as it is possible so to do, of Mr. Northey Jones' suggestion, which he put in these words, "It seems reasonable to suppose" -- I was directing evidence to refute that "reasonable to suppose" supposition of Mr. Northey Jones, in other words.

Q. Now, have you prepared such a statement

A. Yes.

Q. Now will you please produce it as Exhibit 276? That exhibit, my lord, is entitled "Adjusted comparative results, year 1949." It is divided into two parts, the upper portion dealing with the Canadian Pacific Railway and the lower portion with the Canadian National Railways.

EXHIBIT NO. 276: Statement entitled "Adjusted Comparative Results, year 1949."

MR. O'DONNELL: Q. Now, Mr. Cooper, will you please tell the Commission, taking the figures from your statement, what the net earnings of the Canadian Pacific after fixed charges and taxes would be if they had a level of freight rates which would produce for them a return of $4 \frac{2}{3}$ per cent, the figure used by Mr. Northey Jones, on their property investment of roughly a billion dollars?

A. \$35,800,000.

Q. Now, that is the figure shown in the third line of your statement, is it not?

A. Yes.

Q. Estimated surplus after fixed charges and taxes.

And that figure, my lord, I might mention is to be found in Volume 113 at page 20588. That is, the answer of Mr. Northey Jones at that point was:

"Q. So that after deduction from that sum of \$47,500,000 the result would be an approximate surplus after fixed charges in the first instance of about \$35,800,000?

A. Correct."

Now, what would be the corresponding figure for the Canadian National, Mr. Cooper?

A. \$14,729,000.

Q. And that figure shown at the bottom of the first column of figures on this Exhibit 276?

A. Yes.

Q. Now how much would the Canadian Pacific net earnings be in excess of those of the Canadian National on the basis of your exhibit?

A. \$21,071,000.

Q. Now, Mr. Cooper, would you please tell the Commission, taking the figures from your statement, what the net earnings of the Canadian Pacific after fixed charges and taxes would be if they had a level of freight rates which could produce for them a return of 6 2/3% on their property investment of about a billion dollars -- again, those figures being the figures used by Mr. Northey Jones?

A. \$54,900,000.

MR. O'DONNELL: That, my lord, is the answer which was given by Mr. Northey Jones, again in volume 113 of the transcript, at page 20588, where the question and answer are as follows:

"Q. And with respect to the second figure, \$66,600,000, it would be an approximate surplus after fixed charges of about \$54,900,000, deducting the same --

A. Deducting the same fixed charges of \$11,700,000 which are only a proportion of the Canadian Pacific's fixed charges of \$14,543,000."

Q. Now, what would the corresponding figure for the Canadian National be, that is, the figure corresponding to the \$54,900,000?

A. \$36,863,000.

Q. And that is the last figure in the second column of figures on Exhibit 276?

A. Yes.

Q. Now, how much would the Canadian Pacific net earnings be in excess of those of the Canadian National on the basis of those figures

A. \$18,037,000.

Q. Now, Mr. Cooper, Mr. Norman in his testimony on April 25 --

COMMISSIONER ANGUS: Before we leave these figures, might I ask one question of Mr. Cooper.

Q. These are on the assumption that the Canadian National Railway would be paying corporate income tax?

A. Yes, sir.

Q. Would you be equally happy if neither railway paid it?

A. Would I?

Q. Yes, I mean, as the Canadian National.

A. Yes.

Q. I ask you that because the corporate income tax on the rail income of the Canadian Pacific, we are told, is passed on in freight rates, and any marginal item is not spread out equally across the country, but affects the rates in non-competitive segments of the traffic. Now, that is perhaps a case without a parallel in other income tax situations, and it might conceivably be a method of reasonable adjustment to remove the income tax on the rail income of the Canadian Pacific.

A. It might be a method of improving a railway situation without transferring the cost to the shippers.

MR. O'DONNELL: Q. Now, Mr. Cooper, so much for that Exhibit 276. Mr. Norman in his testimony on April 25, which is found in volume 113, furnished to the Commission two tables which were annexed to his written submission and are identified as Sheet 1 and Sheet 2 of that submission, which purported to show the relative results of the Canadian Pacific and the Canadian National resulting from the recapitalization proposals of the Canadian National for the year 1949, if the 20% increase sought by both had been in effect throughout the year and if the Canadian National had enjoyed throughout that year the benefits of their proposals;

and the tables show that the surplus which would have resulted for the Canadian National was \$28,867,000, and that the surplus which would have resulted for the Canadian Pacific was \$14,217,722. In other words, the Canadian National surplus, according to Mr. Norman's submissions or statements, would have exceeded that of the Canadian Pacific by \$14,650,000.

Mr. Covert indicates to me, my lord, that those tables will be found in the transcript in volume 113 at pages 20637 and 20638.

THE CHAIRMAN: Yes, I have it. Now, would you repeat what you were just at?

MR. O'DONNELL: Yes, my lord. I say that the tables show that the surplus which would have resulted for the Canadian National was \$28,867,000 -- that is the figure on the bottom of Sheet 2 -- and that the surplus which would have resulted for the Canadian Pacific was \$14,217,722; in other words, the Canadian National surplus --

THE CHAIRMAN: Where is that figure?

MR. O'DONNELL: Sheet 1, my lord, page 20637. In other words, the Canadian National surplus would have exceeded that of the Canadian Pacific, according to Mr. Norman's figures, by \$14,650,000.

(Page 20892 follows)

Q. Mr. Cooper, I asked you if you would please check those figure. Have you done so?

A. Yes.

Q. And have you prepared a statement showing the results of your analysis?

A. Yes.

Q. Will you be good enough to produce that as Exhibit 277?

A. Yes.

Q. Will you please tell the Commission whether you agree with the statement made by Mr. Norman?

THE CHAIRMAN: Pardon me, but is this to be an Exhibit?

MR. O'DONNELL: Yes, Exhibit 277. I suppose I really should identify it for the purpose of the record. It is a statement of adjusted comparative results for the year 1949, Canadian Pacific Railway and Canadian National Railway, the table being divided into two sections again.

THE CHAIRMAN: It has the same title as the last one?

MR. O'DONNELL: Yes, except that Exhibit 276 refers to the figures used by Mr. Northey Jones and Exhibit 277 deals with the figures presented by Mr. Norman.

EXHIBIT 277....filed by Mr.	:	Statement of adjusted
O'Donnell	:	comparative results,
	:	1949, Canadian Pacific
	:	Railway and Canadian
	:	National Railways

Q. Will you please tell the Commission whether you agree with the statement made by Mr. Norman?

A. I positively do not.

Q. What do you say the relative results would have been under the conditions which have previously been referred to?

A. My estimate of the results ^{is} set out on Exhibit 277. For the Canadian Pacific the estimated surplus after fixed charges and taxes would be \$34,840,000 whereas in the case of the Canadian National, the estimated surplus after fixed charges and taxes would be \$13,564,000.

Q. What would the Canadian Pacific surplus be in excess of the Canadian National?

A. \$21,276,000.

Q. Just while we are on the point as to fixed charges and taxes, those are taxes on railway operations only?

A. Yes.

Q. Then you say, Mr. Cooper, that instead of the Canadian National exceeding the Canadian Pacific, the reverse would be the case?

A. Yes.

Q. Then what is the difference, or shall we say what is the margin of error according to you which is found in Mr. Norman's statement?

A. I differ from Mr. Norman to the extent of \$35,926,000.

Q. And that is shown on the face of your Exhibit 277?

A. It is shown by comparison.

Q. Together with other documents?

A. It is shown by comparison of his statement with those I made.

Q. Yes. Taking the difference bases of comparison as they appear on this statement, it seems to indicate that the Canadian Pacific surplus after fixed charges and taxes is approximately \$20 million a year better than the Canadian National?

A. Yes.

Q. That is, if the results be stated on a comparable basis?

A. Yes.

Q. Why, in your opinion, would that be so?

A. If the fixed charges of the Canadian Pacific and those of the Canadian are approximately equal, I would say that because of the physical characteristics, density of traffic and operation of lines in the national interest, the results of operating the Canadian Pacific Railway will always be found to be more favourable than those of the Canadian National.

Q. Do you think that that same situation will be found to exist under all levels of traffic?

A. Yes. My opinion is that under all foreseeable conditions the Canadian National cannot expect to show up more favourably or even as favourably as the Canadian Pacific. In that connection I might refer back to the answer which I gave to Mr. Covert in his cross-examination. I believe the answer is to be found at page 18784 of the record.

Q. Yes. And that, my lord, for the convenience of the Commission, will be found in Volume 101. I might just read the question and answer. They are as follows:-

"Q. Yes. Well now, would these

proposals put you on a parity with the C.P.R.?

A. Oh, I think we would be very inferior yes, to the Canadian Pacific. I showed you yesterday that for the 1949 with all the additional revenues assumed to have been received, with these adjustments made, that our net income would be a matter of \$13 million. Now, that surplus would disappear if our traffic ^{volume} were to be reduced by $2\frac{1}{2}\%$. I said therefore that even on this basis there is really nothing left for a return on equity capital, there is nothing left for additions betterments. I don't think on that basis that we have yet approached comparability with the Canadian Pacific, in results."

That is the answer you referred to?

A. Yes.

THE CHAIRMAN: Is that Mr. Fairweather's answer?

MR. O'DONNELL: No. That is Mr. Cooper's answer, my lord. That is all I have for Mr. Cooper.

COMMISSIONER ANGUS: Q. I have one other question I would like to ask. In the war years the Canadian National Railways I think did pay certain sums to the Government?

. Yes.

Q. Did this take the form of so much per share on their equity capital or did it take some other form?

A. During the war years the Canadian National was fortunate enough to have surplus earnings. They amounted in all to about \$112 million. We discussed with the

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Department of Finance as to what disposition should be made of those surplus earnings. We proposed to use them for additions and betterments so as to reduce the amount which we otherwise would have needed to borrow from the Government for additions and betterments. The Department of Finance said to us, "No; we would prefer that you would pay them back in reduction of your indebtedness to us." The effect is roughly the same, but that was their preference. So that in answer to your question, Dr. Angus, I say that the surplus earnings of the National Railways during the war period were paid back to the Government to reduce the railways' indebtedness to the Government.

Q. If effect were to be given to Mr. Donald Gordon's proposal and the Directors considered the disposal of the surplus and decided to pay it over in whole or in part to the Government, would that payment take the form of a payment of so much per share?

A. I think I testified, see Exhibit 246, that, under present levels of traffic and if the 16% increase had been in full effect, and if the Gordon ^{had} proposals ~~been~~ in full effect, we would have had a surplus of \$13 million. If that were the situation, -first of all, the matter you are referring to, of course, would be a matter that would be decided by our Board of Directors.

Q. Yes.

A. That is, the disposition of the earned surplus I think is more a matter for the directorate than it is for any particular officer of the railway. To try to be helpful and give my opinion as to what would happen, I think that the railway would ask the Government's permission to use that \$13 million to finance, so far as it would go,

the amount of money needed for additions and betterments.

THE CHAIRMAN: Q. The question is in what form would any payment you might make to the Government take? Would it be a dividend on your stock -that is to say, apportioned according to the ownership of the stock held by the Government -or would it be regardless of that?

A. My answer, my lord, was thatⁱⁿ/my opinion we would ask permission to use the \$13 million to partly finance our capital expenditures -- that is for additions and betterments -- which in the year 1949 amounted to \$18,223,000. That figure represents our expenditures other than for equipment. So that instead of borrowing \$18 million from the Government, we would have borrowed \$5 million from the Government; and that in my opinion is what would happen if the situation referred to arose.

COMMISSIONER ANGUS: Q. Even if it is a fantastic hypothesis, suppose that in some future year you did earn a larger surplus and decided to pay over some part of that surplus. On this capital structure, is it contemplated that that would be a lump sum payment or that it would be a payment in the nature of a dividend of so much per share?

A. It probably would be a lump sum dividend rather than an amount per share. But the result is the same.

MR. O'DONNELL: It is payment. It does not matter what you call it.

CROSS-EXAMINATION BY EVANS:-

Q. Mr. Cooper, may I take it, from the fact that you have used income tax as a deduction in arriving at the surpluses on these two Exhibits, that the Canadian National is prepared to propose as a

condition to the recapitalization that it should pay income tax?

A. I stated in my testimony, Mr. Evans, that if we were put on a parity with the Canadian Pacific in the matter of fixed charges, if the present proposals were approved and put into effect, the Canadian National Railways would consent to be subject to Dominion Income Tax.

Q. Would you go this far that you would be prepared to make your proposals conditional on a tax being imposed?

A. No.

MR. O'DONNELL: Let us be clear about that. Our proposals are on the record as they are at the present time. We ^{have} said what we are prepared to do, and there it is. When my friend keeps suggesting ---

THE CHAIRMAN: When you say they are on record you are referring to Mr. Gordon's statement?

MR. O'DONNELL: Yes, Mr. Gordon's statement and what Mr. Cooper said about it.

THE CHAIRMAN: Does Mr. Gordon's statement cover it?

MR. O'DONNELL: No.

MR. EVANS: No.

MR. O'DONNELL: Mr. Cooper said what he said in regard to income tax. But when my friend suggests we should take him by the hand and lead him up to Parliament hill and try to get an Act through to suit him, that is a different matter. We said what we are prepared to do.

THE CHAIRMAN: ^{you say} And there is no use in going over it again.

MR. O'DONNELL: No.

THE CHAIRMAN: I do not know where Mr. Evens intends to proceed from there. But he is asking him to state again what you propose to do.

MR. O'DONNELL: All I say is that our proposals are on the record.

THE CHAIRMAN: I know. But what is it?

MR. O'DONNELL: It is what Mr. Gordon's statement is, together with what was said about it.

THE CHAIRMAN: On this one question of income tax?

MR. EVANS: Yes.

MR. O'DONNELL: And all that has been said about income tax has been said by Mr. Cooper; and it is on the record.

THE CHAIRMAN: Why cannot he tell me what the proposal is if you do not want him to tell Mr. Evans.

MR. O'DONNELL: It is not a matter of telling you or telling Mr. Evans. It is on the record, and I will let the record speak for itself.

THE CHAIRMAN: Mr. Cooper might tell us again.

MR. EVANS: I have no doubt on what Mr. Cooper said and I do not think Mr. Cooper has attempted to change what he has said.

MR. O'DONNELL: No, I do not think he has. I am quite satisfied to leave it as it is.

THE CHAIRMAN: What did he say? That the company would be willing to have income tax deducted? Is that so?

THE WITNESS: Provided, sir, that Mr. Donald Gordon's proposals were approved and put into effect. I am now reading from the record at page 18757 where I said this:-

" Then I wish to say to the Commission that as far as we are concerned we are willing to be made subject to income taxes too. If you adjust our capital structure, put us on a parity with the Canadian Pacific in respect of those matters, we are satisfied to be put on a parity with them with respect to matters such as income tax ex. But, we do object, we have always objected, or we have always resisted the criticism directed against us because we did not pay tax, when we had the burdens on us that we have been talking about."

Which I think are even greater than those in the matter of income tax carried by the Canadian Pacific.

MR. EVANS: My question to Mr. Cooper to which my friend apparently took objection was ^{not} predicated on any misunderstanding as to what Mr. Cooper said in his earlier evidence. My submission to the Commission is this, that it was not part of the proposal put forward in the first instance. The section of the Transcript that has been referred to was during the cross-examination of Mr. Cooper when he said that if the proposals were accepted, the Canadian National would consent to pay income tax. All I asked Mr. Cooper, and I got an answer, was this: Is he now making it part of his proposal or a condition of his proposal that if that proposal is accepted, income tax will be paid? There is quite a difference, because I should like to go on ^{and} pursue the matter with Mr. Cooper.

THE CHAIRMAN: I just heard him reading his answer and one of the conditions he brought in was some situation of comparability with the Canadian Pacific.

THE WITNESS: Yes, sir.

MR. EVANS: As a reason for thinking about the Canadian National.

THE CHAIRMAN: As a condition.

THE WITNESS: Comparability in that connectinn had to do with fixed charges.

MR. EVANS: Yes. I pursue the subject a little bit further, Mr. Chairman?

THE CHAIRMAN: Yes, As long as there is a clear understanding of what Mr. Cooper told us there is the position of his company in respect to payment of income tax. We have just heard it read. I think we understand what it is. What do you want to ask him?

MR. EVANS: Q. If I may review what the answer was before, Mr. Cooper, the answer you gave me just now was that while you would consent, you would not be prepared to have ^{it} made a condition of the recapitalization proposals that income tax should be paid?

A. I take it you want some kind of written guarantee or something of that sort?

Q. I want an answer to my question.

MR. O'DONNELL: The question has been answered. In my respectful submission, my lord, it is on the record. I say to my friend, "Let us leave it at that. You have got a good answer. Why try to gild it?"

THE CHAIRMAN: Would you please turn this way, Mr. Cooper and speak louder?

A. I will try.

MR. O'DONNELL: It is all on the record. Why ask it three or four times?

MR. EVANS: I do not know why my friend is so sensitive about this matter. There is nothing in the record --

MR. O'DONNELL: Certainly it is on the record.

MR. EVANS: Will my friend please leave me alone?

Q. Mr. Cooper, the comparison in the two Exhibits 276 and 277 assumes the payment of income tax by the Canadian National?

A. Yes.

Q. If the tax were not imposed, notwithstanding the consent of the Canadian National, then the Exhibits would have to be re-stated so that on Exhibit 277, according to your figure the surplus, to compare with the surplus of the Canadian Pacific would be \$20,867,000 instead of \$13,564,000?

A. If you are going to eliminate all the "ifs" from this statement, you will have to go much further than that.

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This statement is a reconstructed income statement on certain assumptions.

Q. Yes.

A. Some of the assumptions are favourable, and some of them are not favourable.

Q. I am not discussing the favourable character of them, but I think the exhibit made clear the answer to my question, because I wanted to pass on; but if it does not make it clear to you, I think it can be argued.

MR. O'DONNELL: May I just interject this: Whether the tax be taken in or left out, the result is just what we said it was, ^{namely,} that the Canadian Pacific would have more estimated surplus after fixed charges and taxes than we would. In any event, I agree with Mr. Evans when he says he wants to pass on to something else.

MR. EVANS: Q. May we proceed on this basis, Mr. Cooper, that taking Sheet No. 1 from the transcript on page 20637 --

COMMISSIONER ANGUS: That is Mr. Norman's statement?

MR. EVANS: Yes, that is Mr. Norman's Sheet 1.

THE WITNESS: Yes.

MR. EVANS: Q. The only ~~thing~~ which is needed to reconcile the surplus of \$14,217,722 on that statement with your Exhibit 277 figure of \$34,840,000 for the Canadian Pacific is the amount of approximately \$20,000,000 of dividends?

A. Yes.

Q. So that the only difference between you and Mr. Norman in that regard is that you treat as a surplus the amount available for dividends, whereas he has taken the surplus after dividends?

A. He has in his statement.

Q. Yes.

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A. But not in his evidence.

Q. I am talking about his statement, yes.

A. Yes.

Q. With regard to Sheet 2 of Mr. Norman's statement, on the following page, I should like to go with you through the reconciliation of the surplus figure which he gives there of \$28,867,000, with the surplus figure which you show on Exhibit 277 for the Canadian National. I first suggest to you that the two are reconciled first by eliminating the income tax which appears in Exhibit 277 for the Canadian National, but which does not appear in Mr. Norman's sheet 2.

A. Yes. That is one item.

Q. That is one item. The second item is an item of \$8,000,000 taken from Exhibit 246 or at least appearing in Exhibit 246, which was applied to reduce, as it were, the surplus in that exhibit from which the \$13,698,000 was taken. You can test ^{that} by adding \$8,000,000 deferred maintenance figure to \$7,303,000 for taxes, and ^{as} the difference, I make it, is \$15,303,000 which, added to the \$13,564,000 reconciles Mr. Norman's statement in Sheet 2 \$13,567,000 I should say.

A. If I might shorten it up, the difference between the two statements consists of the item of \$20,623,000 for dividends; \$8,000,000 of credit from deferred maintenance. I would have to work that out.

Q. I suggest to you that if you want to reconcile Mr. Norman's \$28,867,000 with your figure of \$13,567,000 on Exhibit 277, --

THE CHAIRMAN: \$13,564,000.

MR. EVANS: I am sorry, \$13,567,000 on Exhibit 277.

THE CHAIRMAN: Is it \$13,567,000?

MR. EVANS: No, it is \$13,564,000. You are quite

right, my lord.

Q. After you add ^{to} the \$13,564,000 the two amounts of \$7,303,000 for income tax and \$8,000,000 for deferred maintenance, then you come out with the figure which Mr. Norman has on this Sheet 2.

A. That is correct.

Q. When you say that you most positively -- and I think you used that word -- disagree with Mr. Norman, would it be fair to say that the extent of the disagreement is represented by these adjustments we have been speaking of, but that apart from that you have no disagreement? I am speaking of Mr. Norman's two sheets.

A. As regards the Canadian National Railways only?

THE CHAIRMAN: Pardon me. We will take a few minutes off now for recess.

(Page 20906 follows)

---After Recess:

MR. EVANS: Q. I am not sure, Mr. Cooper, whether I got an answer to my last question or not.

THE CHAIRMAN: Better put the question again, or have it read.

MR. EVANS: Well, the reporters changed in the interval, sir. Perhaps the recollection of the witness is clearer than mine.

Q. I think my last question, Mr. Cooper, was whether, when you said you positively disagreed with Mr. Norman, there was anything more than those reconciliations that we have been talking about, whether there was any other measure of disagreement between your two exhibits, 276 and 277, and Mr. Norman's Sheet 1 and Sheet 2.

A. Mr. Evans, I was confused; I thought you were speaking of the difference between the two statements which amounted to thirty-five million --

THE CHAIRMAN: Q. Between what?

A. The difference between the two statements, which amounted to \$35,926,000.

MR. EVANS: Q. I am.

A. I now understand that you are speaking of the difference with respect to the Canadian National.

Q. Oh, yes.

A. Now, the difference with respect to the Canadian National is comprised of two items -- one, an amount of \$7,303,000 for tax, and the other an amount of \$8 million for deferred maintenance.

Q. And then I think we agreed also that the reconciliation of the Canadian Pacific figures is accomplished by taking the amount of dividends amounting

to \$20 million off your figure of \$24,840,000 in Exhibit 277, and you come out with the figure Mr. Norman had at the bottom of Sheet 1?

A. Yes, except that I would prefer to add it to Mr. Norman's figure rather than deduct it from mine.

Q. Well, I am talking about a reconciliation.

A. Yes.

Q. And that apart from the need for reconciling this exhibit of yours with those two sheets in the way we have talked about, there is no disagreement, positive or otherwise, as between you and Mr. Norman on those two sheets of his that we have been talking about?

A. That is so.

Q. We come now, then, perhaps for a moment to consider the matter of deferred maintenance. That requires, I think, looking at Exhibit 246. I think you and I discussed this --

A. Yes, we had a discussion on that, Mr. Evans.

Q. But, as I recall it -- and I am sorry to say I have not got the reference, because I did not expect to have to cross-examine you this morning --

A. I think, Mr. Evans, if I may interrupt it is to be found --

Q. Perhaps it is not worth while looking up, because I think you and I can get straight on it in a minute.

A. Probably.

Q. The \$8 million which you had shown in Exhibit 246 was an amount which you drew down from the maintenance fund which you had in that year?

A. In 1949, yes.

Q. In relief of expenses for the year?

A. Yes.

Q. So that had you not had the \$8 million figure in Exhibit 246 your surplus would have been increased by \$8 million, as shown on that exhibit?

A. Yes.

Q. Now, are you aware that in 1949 the Canadian Pacific had a similar draw-down from its maintenance fund in relief of expenses?

A. You have told me so.

Q. Are you not aware of that?

A. Not otherwise.

Q. Now, assuming with me that that fact has been proved in these records, you would agree, I think, would you not either that in order to get comparability the \$8 million should be taken out of your Exhibit 246 and the result of it taken out of your Exhibit 277, or else a comparable adjustment would have to be made in your Exhibit 277 for the Canadian Pacific's figure of \$7,500,000?

A. I do not agree with you, Mr. Evans. It could be correct, but then I do not know the conditions under which you transfer this amount of approximately \$8 million from your reserve to the credit of your operating expenses. I do know the conditions under which the Canadian National did so, and it may be that the conditions on the Canadian National were comparable with those of the Canadian Pacific or they were not. Now, as to whether they were or not I do not know, and therefore it would be for you rather than me to determine whether the credit of \$8 million should or should not be eliminated in a comparison of the Canadian Pacific and Canadian National results for the year 1949. Mr. Frawley, I believe, pointed to certain differences in the situation, and that just added to the doubt I had

as to whether the conditions were comparable or not.

Q. Now, assuming that they were comparable, you would agree that you would have to adjust the comparisons made in Exhibit 277 one way or the other to get a comparable --

A. Assuming all things were on a parity, yes.

Q. You were not here when Mr. Liddy gave his evidence?

A. No, sir.

Q. Because I suggest to you that Mr. Liddy said almost exactly what you said, namely, that maintenance expenses in 1949 were in his opinion not above normal before the deduction was made from the maintenance fund?

A. Yes.

Q. That is practically your position on the \$8 million?

A. And that in turn seems to me to prove the accuracy of my exhibit No. 246, and that ^{if} any adjustment is to be made it should be made in the Canadian Pacific figures and not in those of the Canadian National.

Q. But at all events an adjustment should be made, and would change the figures in 277 to the extent of \$7,500,000 on the Canadian National surplus?

A. On the assumption that comparability existed throughout.

Q. I quite agree. So that if we did not adjust the Canadian National surplus beginning figure of \$13,698,000, the adjustment being made to the Canadian Pacific figure would reduce your figure of \$34,840,000, to \$27,260,000?

MR. O'DONNELL: That is on Exhibit 277?

MR. EVANS: On Exhibit 277.

THE WITNESS: Yes.

MR. EVANS: Q. Now, if I may pass to 276 -- did I gather from you, Mr. Cooper, that it was your view that you made no recovery of deferred maintenance in 1949?

A. I said it was a matter of the greatest difficulty, that as far as our engineers are concerned -- and they are the people that would advise me in a matter of that sort -- they would not admit that we were catching up deferred maintenance.

Q. Because I notice your annual report rather suggests, at the bottom of page 7, in these terms:

"Maintenance of way structures expenditures amounted to \$3,699 per mile of road operated. Some progress was made during the year on recovery of deferred maintenance and \$8,000,000 was charged to deferred maintenance reserve."

A. Yes.

Q. Would that not suggest to you that it was the view of the management of the Canadian National that there had been some actual excess above normal maintenance done in 1949?

A. Well, if the report had been written by the engineers, I would agree with you. I explained to the Commission in answer to your question that it was our policy to transfer credits to operating expenses from the deferred maintenance reserve, irrespective of whether or not deferred maintenance was being caught up. I said that when during the war we established this reserve of \$39 million, the understanding was that we would draw down year by year that amount of money over a five-year period. That is what we have done. For example, in 1949 we shall take \$9 million

out of the deferred maintenance reserve quite irrespective of the amount of maintenance performed. That is what we did in 1949, and as far as I am concerned, on the advice of our engineers, we did not overtake deferred maintenance to that amount.

Q. Mr. Gordon, I think, also said in his statement in the report -- this is in the letter to the Minister which appears at page 4 of the report and then on page 5 of the report, in almost the same terms:

"Progress was made in overtaking deferred maintenance which had accumulated during the war and early post-war years."

Does that not also suggest what I was putting to you before that there had been perhaps some maintenance done in excess of normal?

A. There may have been some.

Q. Then if I may turn to Exhibit 276, may I put it to you that those elements which were required to reconcile Exhibit 277 with Sheets 1 and 2 of Mr. Norman are treated in exactly the same way by you in Exhibit 276 as you treated them in Exhibit 277?

A. Yes.

Q. And, so that we will have no misunderstanding, the Canadian Pacific figures of surplus are, before dividends -- am I right? -- in both cases under two columns?

A. Yes.

Q. Now, the opening figure on the Canadian National statement of \$13,698,000 is also that figure taken from Exhibit 246 after the treatment of the item of \$8 million of deferred maintenance that we were referring to in the previous exhibit.

A. That is correct, Mr. Evans.

Q. And it also, I think, follows that the item of income tax is adjusted to the surplus which results on these various assumptions in Exhibit 276

A. Yes.

Q. Now, I would like to ask you this: the figure of \$43 million on Exhibit 276 opposite the item, additional revenue on the assumption that the 16% had been increased by 20%, is an estimate of the Canadian National of the revenue which would be required in addition to existing 16% increase in rates -- perhaps I can break my question there. The \$43 million is the dollar estimate of the Canadian National of the increased revenue on the assumption that in 1949 it had had throughout the year an increase of 20% in freight rates in excess of an increase authorized by the Board to date of 16%?

A. That is correct, Mr. Evans, except that I would not say the figure was a Canadian National estimate. It was derived from an estimate made by Mr. Gracey for the Canadian National and Mr. Liddy for the Canadian Pacific with respect to the amount of additional revenue which would be needed in the case of the Canadian Pacific to earn this return of $6 \frac{2}{3}\%$ on its investment.

Q. Perhaps I can get it down to this basis with you. Messrs. Gracey and Liddy, I understand you to say, agreed that the Canadian National would derive \$43,014,000 from a further increase of 20%; is that what you are saying?

A. No. They agreed, I believe, ^{that} for the Canadian Pacific to earn $4 \frac{3}{4}\%$ on an investment of a billion dollars, the Canadian Pacific would need to have an additional \$7.6 million of revenues, which would mean

an additional 5% increase in freight rates.

Q. Now, that is the first column?

A. Yes. Going over to the 6 2/3% basis, they estimated that it would require \$37 million to produce earnings needed to give them 6 2/3% return. Now, my \$43 million bears the same relation to the \$8,900,000 which your \$37 million bears to the \$7.6 million.

Q. You have simply made a straight mathematical projection, as it were, of those figures to get the \$43 million?

A. In addition we checked it with the figures that we have as to the product of these various rate increases.

Q. Then, Mr. Cooper, all I want to get from you is, does that 20% assume an increase on all rates except the grain rates of 20%, or what does it assume?

A. Frankly, Mr. Evans, I do not know. The understanding was that Mr. Liddy and Mr. Gracey would get together and agree on the amount of additional revenue needed by the Canadian Pacific to produce the 4 3/4% return in the one case, the 6 2/3% return in the other case, and the amount of money that would be converted into a percentage, and they came back and told me that in the one case ^{it was 5%} and in the other case it was 20%.

MR. O'DONNELL: And I think I tied in with what Mr. Evans said to the Commission this morning as to the \$66 million requiring 24% increase over the 16.

MR. EVANS: Oh, that is where it comes in?

MR. O'DONNELL: Yes.

MR. EVANS: So that figure must assume, as I take it -- and perhaps my friend can tell me now -- that figure assumes that there is no increase in

competitive rates and no increase in grain rates.

MR. O'DONNELL: Well, as to the refinements of the computation I do not know. My instructions the other day were that in order to get \$66 million net operating railway income, \$66,600,000 for the Canadian Pacific, it would require approximately an increase over rates as presently in force of 24%, and that is a figure which was checked, and that is the figure which Mr. Evans said at the opening of the hearings this morning was correct, subject to those refinements that he mentioned in connection with it. I do not think there is any disagreement on that score.

MR. EVANS: Q. Now, I am coming very close to the end of what I have to say. I noticed that after I came up here, in answer to a question by the Commission, you spoke of the necessity for borrowing in 1949 for additions and betterments on the assumption that the surplus of \$13,698,000 shown by Exhibit 246 had been earned, and I think you said that you would have had to borrow \$5 million for additions and betterments if that surplus had been in fact earned.

Q. I think that was my answer this morning, yes.

THE CHAIRMAN: Pardon me. Does that mean that eighteen million and something were required?

MR. EVANS: I think Mr. Cooper told some member of the Commission or you, sir, that \$18 million was required in 1949 for additions and betterments, and that a surplus of \$13,698,000 shown by Exhibit 246 would have been short by \$5 million, and that that difference would have had to be borrowed.

Q. Now, I am going to suggest to you -- and I think I am right on this, Mr. Cooper -- that that perhaps is not quite so, having in mind the treatment

of deferred maintenance, because that \$8 million which has been used to reduce the surplus in your exhibit was available from the maintenance fund which is a fund in the true sense of the word, wasn't it?

A. Yes, but we do not mix up our operating accounts with our capital requirements, Mr. Evans.

Q. I am speaking now of the funds. You probably would not have had to borrow from the Government the \$5 million in that case, would you

A. The \$8 million might just as well have gone to pay other accounts than maintenance of way. It helped to reduce our total operating expense requirements. It had no relation whatever to requirements on capital account. They are kept separate for us. That is, they are accounted for separately by us, and they are financed separately by us.

Q. I just want to get this straight, that you did draw down from the maintenance fund \$8 million?

A. That is correct.

Q. Now, I assume that those funds were represented by cash

A. They were invested for the time being, but as required they were converted into cash and used for the payment of our operating expenses.

Q. So that, having reduced your operating expenses by \$8 million, the surplus earnings from operations would have been increased by that \$8 million in any case, so far as your cash in hand was concerned?

A. Well, of course, when we speak of the \$13 million, Mr. Evans, you will remember that it took credit for a lot of money that we never received. It was on the assumption that certain freight rate increases had been in effect for a full year. Actually we got

8% from October 11, 1949, we got something in the order of \$3 million, whereas there is credit in statement 246 for something like \$35 million, so that there is over \$30 million in the \$13 million which as far as cash is concerned we never received.

Q. Yes, but I think you put it yourself on the basis that all these conditions had existed in 1949 and that you had emerged from the year with that surplus. Now, I am suggesting to you that if you had emerged from the year with that surplus that you speak of, the effect of that \$8 million would have been that at least so far as your cash from operations was concerned, it would have been \$21 million odd and not \$13 million?

A. Well, I do not know that I would even agree with that. We have spoken of our operating requirements and our requirements for additions and betterments. I did not mention our requirements for new equipment, and I did not mention our requirements for the redemption of debt, and it would be just as proper for me to say that the \$8 million would be used for requirements other than the two we have been discussing.

Q. Well, of course, the trouble arises from the way I thought your question had been answered to the Commission. You made all these assumptions, that all this surplus of \$13,698,000 would have been applied to additions and betterments, and you would have had to borrow the difference. Now, I am just suggesting to you that, making the same assumptions, the true surplus available from operations, in view of the operation of this fund, would have been increased by \$8 million and that there would not have been any borrowing?

A. Well, it is a very hypothetical situation that you are developing. I do not think I could give you an agreement on that, Mr. Evans, much as I would like to do it.

Q. Then perhaps it does not matter very much.

A. May I interject that, after all, what I am trying to do is make some approximate comparison as between the figures which Mr. Northey Jones and Mr. Norman produced as to the relative positions of the two railways, and they were so far apart in my opinion that I have prepared these two statements. My opinion is that by and large the Canadian National Railways would always be in the order of about \$20 million less in net income than the Canadian Pacific after the President's proposals had been put into effect, whereas there was an implication left, it seemed to me, in the evidence given by these two gentlemen that the reverse would be the situation, and I am trying to make that clear. It would not be the situation; the Canadian National will never earn as much as the Canadian Pacific, in my opinion.

Q. In order not to have any misunderstanding between us, in order to get the result you show, you have to assume that the Canadian Pacific has no dividend requirements and, moreover, that you will be paying income tax?

A. No, that is not correct. You are assuming or Mr. Norman is assuming, that your dividends are a fixed charge. That is where I differ from him.

Q. There is no difference, Mr. Cooper, in result of dividends and a fixed charge, if you have earnings to pay dividends and as a practical matter is there? It is a requirement in rate making.

A. Well, I was not discussing rate making. I am trying to compare the surplus of the two railways after

the payment of fixed charges and taxes.

Q. And you are not assuming any requirement in the event of a surplus of that size, to pay any dividend by the Canadian Pacific?

A. Not as a charge prior to the determination of surplus.

Q. Well, I think we understand one another.

MR. O'DONNELL: The first figure on Exhibit 277, requirements, \$47,576,000, does include the dividend requirement.

THE WITNESS: If I may, after my last answer, I would like to read what Mr. Norman said.

MR. EVANS: Q. At what page, Mr. Cooper?

A. It is the last paragraph of his statement.

THE CHAIRMAN: Q. On what page?

A. On page 20 of his statement, sir. This is paragraph 5:

"That a portion of surplus earnings, after payment of interest, fixed and contingent, should be retained to provide funds for improvements and betterments and the balance paid to the Government as a return on its equity capital."

Now, if that means anything at all it means that a return on equity capital is to be paid out of surplus earnings, and when he says that his surplus earnings are after fixed charges in his statement, I think he is contradicting the evidence that he gave.

Q. Well, I think we understand where the difference arises, and it is reconciled when we talk in terms of dividends as a requirement of the Canadian Pacific but not as a requirement of the Canadian National. Am I right in that?

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A. Would you mind repeating that?

MR. EVANS: Perhaps the reporter will be good enough to read it.

THE REPORTER: "Well, I think we we understand where the difference arises, and it is reconciled when we talk in terms of dividends as a requirement of the Canadian Pacific but not as a requirement of the Canadian National. Am I right in that?"

THE WITNESS: Yes, if you are speaking of requirements, but these statements are not speaking of requirements, they are speaking of surplus earnings.

MR. EVANS: Q. Then I have just one further question. Taking you to Exhibit 276, and assuming the net surplus figures you have in those two columns \$14,729,000 and \$36,863,000, I would like you to check me on this, that that amount of surplus after fixed charges and taxes would comprise in column one 2.5% return on net investment in the Canadian National, and in column 2, 4% return on net investment in the Canadian National?

A. Net investment being what?

Q. After depreciation is deducted.

A. I see.

Q. Would you check that for me, and if I am wrong will you correct that on the record? Will you do that for me?

A. I will do that.

MR. O'DONNELL: That is on the entire amount of the - -

MR. EVANS: Net investment in the Canadian National.

MR. O'DONNELL: Without any adjustments for the nationally operated lines?

MR. EVANS: No. I just wanted to get the figure, what the return was. Thank you.

RE-EXAMINATION BY MR. O'DONNELL:-

Q. Just one question, Mr. Cooper. I think it is clear already on the record, but, so that it might be quite clear, when you spoke of income tax in reply to Dr. Angus' question concerning the C.P.R., you were speaking of income tax insofar as it applied strictly to railway operations?

A. Yes, sir.

Q. Not the corporate income tax?

A. That is so.

Q. Thank you,, Mr. Cooper.

EXAMINATION BY MR. COVERT:-

Q. I just wanted to see if I could have put on the record in a simple form, Mr. Cooper, and in one place, the differences as I see them, the differences between your statements and those of Mr. Norman.

MR. FRAWLEY: Mr. Covert, I told you a moment ago I had no questions to ask, and I have none. I just thought I would like to make this brief statement. Mr. Cooper in his evidence this morning referred to something I said as to the difference between the Canadian National technique in the draw-downs of deferred maintenance, and what I said about the Canadian Pacific method, and I want to do no more than to say that that passage in the evidence can be found at page 19060 of the

Transcript, being Volume 103.

MR. COVERT: Q. If you will take your Exhibit 277 and at the same time if you have Volume 113 turn to page 20637, what I wanted to do was to say, on Exhibit 277 you show the estimated surplus for the Canadian Pacific to be \$34,840,000?

A. Yes.

Q. Then on Mr. Norman's he has a surplus of \$14,217,722?

A. Yes.

Q. So the difference is roughly, \$20,623,000?

A. That is correct.

Q. Then if you take your Exhibit 277 -- dealing now with the Canadian National -- you show estimated surplus of \$13,564,000, and Mr. Norman shows on page 20638, \$28,867,000?

A. Yes.

Q. And the difference is \$15,303,000?

A. Yes.

Q. Now, if you add those together you get \$35,926,000?

A. Yes.

Q. Now, the differences arise, as I understand it, from this: first, dividends of \$20,623,000 on the Canadian Pacific; income tax, which you have shown on your Exhibit 277, of \$7,303,000 and the question of deferred maintenance of \$8 million. Those three figures also add to \$35,926,000?

A. That is correct, Mr. Covert.

Q. As I say, those are the differences in one place? Now, I suppose you can put some of these things very simply, Mr. Cooper. For example, this \$7,303,000

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$.

2. In the second part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

3. In the third part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

4. In the fourth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

5. In the fifth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

6. In the sixth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

7. In the seventh part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

8. In the eighth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

9. In the ninth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

10. In the tenth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

11. In the eleventh part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

12. In the twelfth part, we shall consider the case when the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ are not arbitrary, but satisfy certain conditions.

income tax is a figure that just is not paid by the Canadian National, because they do not pay income tax?

A. Well, sir, this whole statement was built on the assumption that our proposals had been approved and put into effect, and through my evidence I made this statement, that the Canadian National would consent to be subject to income taxes, so that if we are to assume that we get certain relief under the proposals, and there are also some items in reverse, it seems to me that we must take both the good and the bad, if we are to make a realistic statement of the result which would emerge.

THE CHAIRMAN: I want to understand that.

MR. COVERT: So do I, Mr. Chairman.

THE CHAIRMAN: Q. Does that mean simply that you would add a willingness to pay income tax to Mr. Gordon's statement?

A. Yes, sir.

Q. He says, "Give us this, give us that." Now, would you add there, "If so, we will consent to pay income tax"?

A. Yes, sir.

Q. Without any other consideration? Is it not so that you brought in something about comparability with the Canadian Pacific?

A. Sir, the President's proposals were designed to bring about comparability in a very large measure.

Q. All right, then.

MR. COVERT: Q. Then is it to be taken that the proposal also includes a proposal that the Canadian National pay income tax?

A. That is already on the record.

Q. Perhaps it is, Mr. Cooper, but can that not be answered yes or no?

A. Yes.

Q. It means that in addition to the proposals submitted by Mr. Gordon, there is now also a proposal that the Canadian National pay income tax?

A. There is a statement to the effect that we would consent to pay income tax, yes.

Q. Well, I think that there may be a difference between consenting to pay and this being a part of the proposal, and that is what I want to find out.

MR. O'DONNELL: We merely point out what the situation would be if income taxes were paid, and the purpose of Exhibits 277 and 276 is to illustrate what the position would be if the tax be taken into consideration in the computation.

MR. COVERT: That is not what I am interested in at all.

THE CHAIRMAN: For the moment, that is not the question.

(Page 20930 follows)

MR. COVERT: No, it is a simple question. The answer can be yes or no. It is it a proposal or is it not a proposal?

MR. O'DONNELL: Income tax only comes into play if we make any money. That is the position. For the purpose of trying to compare the situations, even after the adjustment which has been called for, Exhibit 277 shows that if you take the income tax into account, we have \$13,564,000 against the C.P.R.'s \$34,840,000. If you do not take it into account, we have \$20,867,00 against the C.P.R.'s \$34,840,000.

THE CHAIRMAN: I am afraid we are not making the situation any clearer. The point, as I have it in my mind as to what Mr. Covert is trying to bring out, is whether Mr. Gordon's statement can be taken as including an expression of willingness to pay income tax if his project is accepted by this commission.

MR. O'DONNELL: Holus bolus.

THE CHAIRMAN: I beg your pardon?

MR. O'DONNELL: Holus bolus; in toto.

THE CHAIRMAN: I am asking ^{you} that. He says, "Give us this, give us that and give us the other thing".

MR. O'DONNELL: I think ^{from} the way your lordship puts the question, the answer would probably be yes.

THE CHAIRMAN: Yes. Then would not your \$9 million just about pay the income tax, apparently?

MR. O'DONNELL: That would depend, I suggest, on the earnings in any given year.

THE CHAIRMAN: I mean, on the figures we have so far.

MR. O'DONNELL: On the figures shown in Exhibit 277

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it would be \$7,300,000. It all depends on what the earnings happen to be.

THE CHAIRMAN: All right; go on, Mr. Covert.

MR. COVERT: With respect, Mr. Chairman, I do not think my question has yet been answered.

THE CHAIRMAN: Put your question, then.

MR. COVERT: Q. My question is this. As to the proposal of the Canadian National as submitted by Mr. Gordon and as amended by the withdrawal of ^{proposed} No. 4, I think it is, ^{does it} include -- can it be now taken to include a proposal that the Canadian National pay income tax?

MR. O'DONNELL: My lord, with respect, may I say to my ^{that} friend, I do not know what more can be asked for than what is on the record in Volume 100 ---

MR. COVERT: Yes or no is all I asked for.

MR. O'DONNELL: At page 18757. There Mr. Cooper says this:-

"I think that it would be possible here, but when you come to the taxation question, if any justification for a difference in method as between the Canadian Pacific and the Canadian National is thought to rest on the fact that the Canadian Pacific pays taxes and the Canadian National do not: then I wish to say to the Commission that as far as we are concerned we are willing to be made subject to income taxes too."

That is very clear. Then he goes on:-

"If you adjust our capital structure, put us on a parity with the Canadian Pacific in respect of those matters, we are satisfied to be put on a parity with them with respect

to matters such as income taxes. But, we do objecte , we have always objected to, or we have always resisted the criticism directed against us because we did not pay tax, when we had the burdens on us that we have been talking about."

I do not know how much more clearly it could be put.

MR. COVERT: I am suggesting, Mr. Chairman, that it can be answered yes or no. That is my submission.

MR. O'DONNELL: He has already answered the question three times.

MR. COVERT: Because I think it makes a great deal of difference.

THE CHAIRMAN: You want to know whether the language used by the Canadian National in this respect can be called the proposal?

MR. COVERT: That is right.

THE CHAIRMAN: Or part of the proposal?

MR. COVERT: That is right.

MR. EVANS: I obtained a flat answer to my question on that same point. I got "no" to that question.

It is really the same thing. My question was whether it was proposed to make it a condition of the proposal that they pay income tax, and his answer to that was "no".

THE WITNESS: I thought you asked me in effect if we would give a sort of written guarantee, and I said "no".

MR. EVANS: I thought my question was quite clear?

MR. COVERT: There seems to be a difference, and

I think it may make a great deal of difference, because I would want to pursue the subject of whether there is any point, my lord, in the Canadian National paying income tax, paying it out of one pocket and putting it in the other.

THE CHAIRMAN: The owner of the railway being the Government of Canada?

MR. COVERT: That is right.

THE CHAIRMAN: Whether it is worth while to go through that procedure?

MR. COVERT: That is right. Another thing is this. Is there any point in their paying income tax if the \$300 million proposal is accepted; where they draw \$9 million a year from it, as is proposed, that may in effect annul it.

THE CHAIRMAN: Do you wish us to recommend that you pay income taxes, Mr. O'Donnell?

MR. O'DONNELL: No, my lord,. I think possibly we are at cross-purposes. We are not telling the Commission what to recommend at all.

THE CHAIRMAN: Oh, yes, you are.

MR. O'DONNELL: The plan is there and we are asking for a recommendation in terms of the plan.

THE CHAIRMAN: Pardon me, you are asking us to recommend the project that Mr. Gordon put forward in his statement.

MR. O'DONNELL: Yes.

THE CHAIRMAN: You are asking us to recommend that ?

MR. O'DONNELL: Yes.

THE CHAIRMAN: Along with that, are you asking us to recommend that you be put in the position that you have to pay income tax?

1. The first part of the report is devoted to a general description of the project and its objectives. It also includes a brief review of the literature on the subject.

2. The second part of the report describes the methodology used in the study. This includes a detailed description of the experimental design and the data collection procedures.

3. The third part of the report presents the results of the study. This includes a description of the data and a discussion of the findings.

4. The fourth part of the report discusses the implications of the findings and provides recommendations for future research.

5. The fifth part of the report is a conclusion and a summary of the main findings.

6. The sixth part of the report is a list of references.

7. The seventh part of the report is an appendix containing additional data and figures.

8. The eighth part of the report is a glossary of terms.

9. The ninth part of the report is a list of figures and tables.

MR. O'DONNELL: We have not asked for that.

THE CHAIRMAN: Are you asking that we do it now?

MR. O'DONNELL: No. I am not asking for that. All we are saying is that if it suggested that there is a difference between us, and that the difference in method is not favourable, then if the Commission thinks that should be done, that is up to the Commission. Our plan has no reference to income tax in it, and it was submitted to the Commission in the terms in which it stands at this time.

THE CHAIRMAN: You have no desire to amend it?

MR. O'DONNELL: No, I do not think we would amend it. But Mr. Cooper did say when he was asked a question -- and I think the question all goes back to Dr. Angus asking a question along that line -- and said very clearly that if we get the adjustments we ask for, that as far as he was concerned they could be made subject to income tax. His exact words were as follows:-

"Then I wish to say to the Commission that as far as we are concerned we are willing to be made subject to income taxes to."
But it was not any part of the proposal. I think maybe we are just at cross-purposes in that respect.

MR. COVERT: Then it is not part of the proposal?

MR. O'DONNELL: No, it is not. That is right.

MR. COVERT: That is all I asked.

MR. O'DONNELL: Maybe I did not understand your question.

MR. COVERT: Q. Since it is not part of your proposal, as I say, ^{and} since you do not pay income tax, we can say that when you suggest that they were

\$35,926,000 apart,
you can deduct \$7,303,000 and that reconciles the state-
ments to the extent that they are only \$28,623,000 apart?

A. No, I do not agree with you.

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Mr. Cooper,

Q. I see. You say, I take it, that you cannot reconcile the statements in that manner and that Mr. Norman should have realized that you were going to put in a statement that would show the Canadian National as paying \$7,303,000 income tax?

A. Yes. I saw some evidence in Mr. Norman's statement that he had read the evidence, and I assumed he read what I said on income tax.

Q. You mean that, by reading that evidence, it should be considered that the Canadian National proposes to pay income taxes?

A. If I had been reading it as an accountant, I certainly would have taken notice of that statement.

Q. Then may I ask you this question. I suppose you recognize that there is a difference between the two roads in the fact that the C.P.R. does pay dividends and the Canadian National does not?

A. Yes. That arises primarily from the more favourable earning position of the Canadian Pacific Railway. Apart from the war years, this question of income tax has never been raised.

Q. No.

A. The Canadian National never had income that was capable of being subject to tax. In the war years, when we did have \$112,000,000 of profits, we gave it to the government in its entirety.

Q. What I had in mind, Mr. Cooper, was simply this : When two reputable accountants present statements to the Commission to show what the situation is and when they are \$35,000,000 apart, that seemed to me to be not only a long way apart, but to be a serious matter.

A. I think it is.

Q. I thought there might be some possibility of

reconciliation, that one might say that he had considered the payment of income tax by the C.N.R. and the other did not, and that is easily reconcilable now; that one includes dividends of \$21,000,000, and that the real difference between you is \$8,000,000 in the treatment of deferred maintenance. But you say that you cannot get that close together?

A. No. When a statement is prepared by Mr. Norman showing what is our estimated surplus, and when he says that it is \$28,000,000 and my computation says no, it is \$13,000,000; then when he says that the Canadian Pacific figure is \$14,000,000 and my computation says no, it is \$34,000,000; then surely I am in duty bound called upon to point these things out.

Q. If the two statements cannot be reconciled at all in a proper manner, there is obviously something wrong with one statement or the other. Would you not say that?

A. I think there is something wrong with one of the statements.

Q. And there would be no question as to whose you would suggest would be wrong?

A. No, sir.

Q. I think that is all I have to ask you.

THE CHAIRMAN: We shall have to adjourn anyhow at a quarter to one, on account of stenographic requirements. It is nearly that now. Who is the next witness, or has anybody any more questions for Mr. Cooper?

MR. O'DONNELL: Is Mr. Cooper through?

MR. COVERT: Yes. Are there any more questions that anyone wishes to ask? Apparently not.

Then the next thing, Mr. Chairman, is the C.N.R.-C.P.R.

MR. O'DONNELL: I have one little matter here

to take up.

MR. EVANS: That would not be with Mr. Cooper?

MR. O'DONNELL: No. I do not think I could finish in three minutes, though.

THE CHAIRMAN: Have you another witness?

MR. O'DONNELL: No.

THE CHAIRMAN: You have something you want to discuss?

MR. O'DONNELL: Just a little statement.

THE CHAIRMAN: Very well. We will begin again at a quarter to three.

At 12.45 P.M. the Commission adjourned to meet again at 2.45 P.M. this day.

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Ottawa, Ontario,

Thursday, April 27, 1950

AFTERNOON SESSION

MR. EVANS: I felt it my duty, my lord, to draw to the attention of the Commission an article appearing in the Toronto Daily Star, financial edition, of yesterday, April 26. The article appears on page 20, which is the financial page, and is under the name of Beland Honderich, Financial Editor. The article is headed:

"U.S. BOND SALESMAN TRIES TO TELL
CANADA HOW TO OPERATE C. N. R. "

And the article opens with this statement:

"A New York bond salesman, whose knowledge of railways probably is limited to selling railway bonds, journeyed to Ottawa this week to tell Canadians how to run the publicly-owned Canadian National Railways system."

I am not going to read the whole article; I have left a copy with Mr. Belcourt; I do, however, draw particular attention to this paragraph near the end of the article:

"Mr. Jones, a partner in Morgan Stanley and Co., may be an expert investment banker or bond salesman. But his knowledge of Canadian railway affairs -- or politics -- hardly stamps him as an expert witness."

Now, I want to say to the Commission that I consider that a most unfair and improper comment upon the proceedings before your Commission, and I am sure that all counsel would deprecate that kind of unfair and improper reporting.

MR. FRAWLEY: All I have to say, my lord, about that is that my friend can take considerable comfort, then, from an editorial in the Montreal Star of I think only yesterday, in which Mr. Jones was spoken of as quite an

estimable witness and someone whose words would doubtless be received very carefully and given great consideration by this Commission. If that was deprecatory, then the Montreal Star was equally laudatory of Mr. Northey Jones.

MR. EVANS: I am sure that means that my friend associates himself with the sentiments.

MR. FRAWLEY: I do not want you to say that. It does not mean that at all.

MR. COVERT: Mr. O'Donnell, you said you had a statement to make?

MR. O'DONNELL: Oh, yes.

THE CHAIRMAN: Are you suggesting any action, Mr. Evans

MR. EVANS: I thought that was for the Commission to say.

THE CHAIRMAN: I say, are you suggesting anything in particular?

MR. EVANS: No, sir; I am merely drawing it to the attention of the Commission.

THE CHAIRMAN: Now, Mr. O'Donnell, do we come now to this new subject matter?

MR. O'DONNELL: No, my lord. Before that, I have a matter that I wanted to draw to the attention of the Commission. It relates to an exhibit which was filed on February 28, 1950, by Mr. Liddy.

THE CHAIRMAN: What number is it?

MR. O'DONNELL: Exhibit 187. It is referred to in volume 85 of the transcript at pages 16683 and 16684. It deals with the proposed order which was drafted by the Interstate Commerce Commission and was forwarded to the American Association of Railroads for study and consideration. It deals with four or five topics, and particularly with the matter of depreciation accounting

in connection with road property in its various phases, such as ties, rails, other track material, track laying services, and so on. At that time I think Mr. Liddy said that, while he had a copy of this -- it had been forwarded to his railroad, I assume, as a member of the Association -- he was not able to tell the Commission very much more about what had happened to it since it had been received by the railroad.

It occurred to me that it would be of interest to the Commission to know what has happened to it in the interval, and in the circumstances, inasmuch as it is something that deals with that very technical subject, which has been the object of much comment before the Commission --

THE CHAIRMAN: What is the subject?

MR. O'DONNELL: Depreciation accounting, my lord. I thought it would be helpful to obtain a copy of the study which was made by the American Association of Railroads, and to have it available for the Commission.

Further reference was made to that matter in the cross-examination of Mr. Liddy by Mr. Frawley on the 3rd of March, 1950, as appears in volume 88 at page 17084, where Mr. Frawley asked what had transpired since the 27th of September, 1948, in connection with the proposed accounting order, and at that time Mr. Liddy had not the information.

The study in question or, rather, the proposed order, was referred to the American Association of Railroads, and the General Committee of that Association, or, rather, the Accounting Division of that Association, which deals with financial accounting, taxation and valuation departments of the Association's studies, appointed a committee to study this proposed order, and that committee

consisted of the following people: Mr. P. J. Kendall, General Auditor of the Southern Pacific; Mr. W. E. Davis, General Auditor of the Atcheson, Topeka and Sante Fe; Mr. P. D. Jonas, Comptroller, Delaware, Lackawanna and Western; Mr. E. Hart, Comptroller, Pennsylvania Railroad; Mr. O. M. Hepler, Comptroller, Chesapeake and Ohio Railway; J. T. Mahaney, Vice-President of the Missouri, Kansas and Texas Railroad; Mr. F. E. Martin, Comptroller of the Illinois Central System; and Mr. T. H. Seay, Comptroller of the Southern Railway System. They were appointed a special committee with the instructions of this General Committee to study this proposed accounting order. They made a study and reported to the General Committee. The study of the special committee is in this booklet or pamphlet, which is a collection of documents that I shall produce as Exhibit 278.

THE CHAIRMAN: What is Exhibit 278?

MR. O'DONNELL: Exhibit 278 is a report of the Special Committee on Interstate Commerce Commission Bureau of Accounts and Cost Finding, Subject - No. 424. It is the one that refers to depreciation accounting for ties, rail and other track material in lieu of the present replacement accounting. That is a study of the special committee of the Association of American Railroads, Accounting Division, which I have referred to earlier.

EXHIBIT NO. 278: Report of Special Committee on Interstate Commerce Commission Bureau of Accounts and Cost Finding. Subject - No. 424.

MR. O DONNELL: The report of the special committee to the General Committee concerning this particular subject of depreciation accounting, the

pertinent part reads as follows, on the first page of the report:

"TO THE GENERAL COMMITTEE:

"Your Special Committee appointed to study and report on Subjects Nos. 423 to 426, incl. submits the following report. Individual reports covering the details of each of the four subjects are attached hereto and made a part of this report."

"2. SUBJECT NO. 424 - PROPOSED ACCOUNTING ORDER TO SUBSTITUTE A REQUIREMENT FOR DEPRECIATION ACCOUNTING FOR TIES, RAIL AND OTHER TRACK MATERIAL IN LIEU OF THE PRESENT REPLACEMENT ACCOUNTING.

"The attached detailed report covering Subject No. 424 develops the harmful results that would ensue if this proposal were to be issued in the form of an order of the Commission.

"The report also brings out that it is particularly unwise to suggest such an important change in the carriers' accounting when the whole subject of depreciation, as affecting accounting and income tax procedures, is receiving wide spread attention from industries generally, as well as economists, public accountants, financial writers, etc."

I deal only with this subject 424, although the other three items are in this report as well.

The recommendations of the special committee are on page 2 of this report, and read as follows, under the heading "Recommendations":

"Your committee recommends that the General Committee go on record as opposing the adoption of all of the proposed accounting orders submitted in this group of four related subjects, and that request be made on the Bureau of

Accounts and Cost Finding for the withdrawal of the four subjects."

Then with respect to this particular 424, I quote in part further on the same page:

"We also recommend that the General Committee offer to cooperate with the Bureau of Accounts and Cost Finding . . . and that it also extend an offer of cooperation toward consideration of any sound changes in depreciation accounting which may be found desirable as a result of the extensive studies being made of the general subject, instead of disturbing the accounting for replacement of elements of track structure as proposed in Subject 424."

Now, that is the report of the special committee, and attached to it are the detailed studies upon which this recommendation, summarized recommendation, was made.

The report itself deals with the history of this proposal No. 424. It deals with the accounting for road equipment, replacement versus depreciation accounting, the effect on investment account and the effect on income account, the tax effect, and then discusses a number of practical problems, and ends with comments regarding this tentative report and the studies made by the Bureau of Accounts and Cost Finding in cooperation with the Bureau of Valuation, those being the I.C.C. bureaus.

On page 29 of the detailed report there is one paragraph here which I think is of interest.

"The proposal indicates that depreciation charges might be based either on the straight line method or on some basis made to correspond with

units of use rather than time. In the studies made by the Bureau of Valuation depreciation is computed by both the straight line and use methods. (See Tables 14 and 19, pages 7 and 8, Appendix 2). It is not the intent of this report to delve into the relative merits of demerits of alternative systems of depreciation. Suffice it to say, however, that the carriers cannot consider with any degree of realism the basis of any proposal except depreciation on the straight line method, lacking, as they do, any assurance that a use basis could be developed which would be acceptable for all accounting and tax purposes."

Then at page 33 follow the conclusions; they are relatively short:

" CONCLUSIONS

"We recommend that the General Committee oppose the adoption of the proposed accounting order for the reasons hereinbefore stated which are summarized below:

(1) Present replacement accounting provides a more nearly accurate and realistic statement of the investment and income accounts because it adheres closely to the variations in the price cycle. We have lived with replacement accounting for thirty-five years and there has not been a showing of compelling reasons for changing to the write-out and write-in and depreciation method.. There has been no showing that the present method of accounting is so bad or the proposed method so good as to warrant the drastic steps required to make the change.

"(2) The effect of this proposal would be to lodge in the investment account very large expenditures which are now and for thirty-five years have been regarded as for repairs of the track structure without any improvement of the property or any extension of its service life.

(3) Accounting under the proposed order would result in the creation of substantial amounts of artificial income. Moreover, income of the railroads would be inflated during periods of prosperity and depressed during periods of adversity. In both cases the results would be harmful to the railroads.

(4) The effect upon Federal and State income taxes cannot be accurately forecast. In any event it appears probable that the railroads would either have to pay additional taxes on the artificial income created or assume a considerable expense to restate their accounts to conform to tax requirements.

(5) The method of accounting as stated in the proposed order is deficient in several important respects and would not accomplish the purposes for which it is designed.

(6) The added burden of expense which this proposal would impose upon the railroads would be substantial and lasting. The additional expense which would have to be incurred for accounting and valuation reporting in connection with the great mass of detail items in the three track accounts would occur at a time when the railroads are being urged to reduce their expenses.

(7) For the most part tracks have reached the age where replacements of the parts are fairly uniform and thus have arrested the diminution of service value which ordinarily occurs in the early years of the life of the track structure. Having reached this point under the replacement method of accounting, a change to write-out and write-in and depreciation accounting would serve no purpose eother than to spread the cost of replacements uniformly by years.

(8) That such changes in depreciation procedures as may appear to be advisable and beneficial from the standpoint of the railroad industry should be progressed through the proper Committee after full study of all modern trends in depreciation practices."

Now, that is in summarized form the report of the special committee. That report was submitted to and discussed at a meeting of the General Committee which was held in Washington on April 5 and 6, and I am instructed that it was unanimously approved, representatives both of the Canadian National Railways and of the Canadian Pacific Railway being present at the meeting.

MR. MacPHERSON: Is that April 5 and 6, 1949?

MR. O DONNELL: 1950.

MR. EVANS: I think perhaps I might say this for the record, that when Mr. Liddy referred to that report he was not advocating the adoption of depreciation of track structures. What he said/^{was}that he gave it as an indication that the Interstate Commerce Commission had turned their mind more to the user basis than had apparently been done in the past. He did not support, nor do we now support, the adoption of

depreciation accounting for track structure.

MR. FRAWLEY: My lord, I would like to say a word about an exhibit I would like to file. I noticed in reading Hansard --

THE CHAIRMAN: Is this on a different subject?

MR. FRAWLEY: Oh, yes, my lord. Reading Hansard of the 14th of March, or perhaps the day after, I notice that the Minister of Transport had made a return in the House to one of the New Brunswick members for the purpose of answering the following questions.

THE CHAIRMAN: Hansard of what date?

MR. FRAWLEY: Of the 14th of March of this year, sir. The Minister of Transport filed a return to answer these questions asked by Mr. Hatfield, one of the New Brunswick members. The questions were:

"1. What are the names and age of each of the Transport Commissioners?

2. When was each appointed?

3. What was their business or profession before appointment to the Board of Transport Commissioners?

4. How many freight rate experts are employed by the Board of Transport Commissioners?

5. What are their names and what was their former employment?"

Seeing that in Hansard, I thought that a copy of that return might well be incorporated into the record of the Commission, but it was not readily available. However, I applied to the Deputy Minister of Transport, and, due to his courtesy I have now been supplied with a copy of that return.

Then I applied to the Deputy Minister of Transport, because I saw in the return that nothing was

mentioned with respect to the Bureau of Transport Economics, which I knew to be an adjunct of the Board, so I asked the Deputy Minister if he would be good enough to prepare a memorandum somewhat similar in form to the return which would cover the Board of Transportation Economics, and then the whole matter would be complete -- the Board of Transport Commissioners, its experts, and the Bureau of Transportation Economics. I may say that the Deputy Minister of Transport was courteous enough to send me the information with respect to the Bureau, and that only arrived today.

I now propose to file as Exhibit 279, an exhibit in three parts, the first of which will be the return filed by the Minister of Transport in the House of Commons on the 14th of March, 1950, which consists of three sheets; secondly, a memorandum consisting of three sheets which are the divisional duties of the Bureau of Transportation Economics; and, finally, one large sheet which sets out the personnel of the Bureau of Transportation Economics, their university or other training, the degree received, the specialization in the Bureau, and the previous employment.

EXHIBIT NO. 279: Information as to personnel, duties, etc., of Board of Transport Commissioners, Bureau of Transportation Economics.

COMMISSIONER INNIS: You have not extra copies of those?

MR. FRAWLEY: Dr. Innis, I am going to leave this with Mr. Belcourt for the time being, and then I would like to have it back so that I can have it mimeographed. I would not have done it this way except that we are reaching the end of the proceedings,

and I wanted to get it filed.

MR. SMITH: Mr. Chairman, I was asked by Mr, Matheson of the Maritime Transportation Commission if I would apply for leave to file some additional exhibits. The exhibits to which I have reference, my lord, are in connection with further and later statistics with respect to the economic and geographic handicaps of the Maritime Provinces.

THE CHAIRMAN: Are there several exhibits, or one?

MR. SMITH: There are a number of them, my lord; in fact, there are fourteen.

They are Exhibits of the D.B.S., my lord. For instance, the first is, National Accounts, Income and Expenditure, 1921 to 1948. The next is another D.B.S. publication, Man Hours: and Hourly Earnings reported at the 1st July, 1949.

THE CHAIRMAN: The first one you mentioned will be Exhibit 280?

COMMISSIONER INNIS: Could those be made part of the whole Exhibit with regard to D.B.S.?

MR. SMITH: Is there an Exhibit from the D.B.S.?

COMMISSIONER INNIS: I am just wondering. You say they are nearly all D.B.S.

MR. SMITH: Yes; one to ten I think are D.B.S. I am not as familiar with these as I should be, perhaps.

COMMISSIONER INNIS: I was thinking it would save the Chairman's writing all those out.

MR. COVERT: I think we had better give them separate Exhibit numbers.

THE CHAIRMAN: Anyway, you have mentioned ten documents.

MR. SMITH: Yes, my lord; they are D.B.S. And there are several other documents in relation to evidence of Professor McDougall, in which the economic conditions of the New England States were contrasted with the conditions in the Maritime Provinces, and there are some reports here.

MR. FRAWLEY: What is the result, Mr. Smith?

CHAIRMAN: Perhaps you might put your ten D.B.S. documents together as one Exhibit.

MR. SMITH: Very well, my lord.

EXHIBIT 280.....filed by Mr.
F. D. Smith

: Booklet entitled
: "National Accounts
: Income Expenditure
: 1941 - 1948" and
: Supplementary Tables.
: (1)

: Booklet entitled
: "Man-Hours and Hourly
: Earnings" reported at
: the first of July, 1949.
: (2)

: Booklet entitled "Man-
: Hours and Hourly Earnings"
: reported at the first of
: February, 1950. (3)

: Booklet entitled "The
: Employment Situation" at
: the beginning of July,
: 1949, together with pay-
: rolls. (4)

: Booklet entitled "The
: Employment Situation" at
: the beginning of February,
: 1950, together with pay-
: rolls. (5)

: Booklet entitled "Heating
: Facilities, Radios and
: Telephones in Canadian
: Homes - August, 1947. (6)

EXHIBIT 280Cont. : Booklet entitled "Radios
: and Household Electrification"
: October, 1949. (7)

: Statement -- Index numbers of
: physical volume of agricultural
: production, 1948, etc. (8)

: Statement -- Net production
: (in dollars), P.E.I., Nova
: Scotia, New Brunswick, Maritime
: Provinces, Canada, percent
: Maritime Provinces of Canada.
: (9)

: Statement -- Life Insurance
: Companies, Provincial classifi-
: cation, 1938. (10)

MR. SMITH: Exhibit 281 will be a publication of the United States Department of Commerce, State Regional and Local Market Indicators, which deals with the question - -

THE CHAIRMAN: United States Department of Commerce?

MR. SMITH: United States Department of Commerce. I think perhaps it would be well if I gave the list to the reporter, and then have copies struck off, so that it would save the time of the Commission.

THE CHAIRMAN: Have copies of those documents struck off?

MR. SMITH: Mr. Matheson is obtaining copies for tomorrow.

THE CHAIRMAN: Tell us just now what they are, so we can take a note of them. We have 280 and 281.

EXHIBIT 281.....filed by Mr. : Booklet, U.S. Department
F. D. Smith : of Commerce, entitled
: "State, Regional and
: Local Market Indicators,"
: 1939-1946.

THE CHAIRMAN: Now, you have three more?

MR. SMITH: The first one I mentioned was a

publication of the United States Department of Commerce.

THE CHAIRMAN: That is 281. What is the next one?

MR. SMITH: The next one is "Growth Trends in the New England Economy," by Joseph A. Erickson, President of the Federal Reserve Bank of Boston, dated January, 1950.

EXHIBIT 282....filed by Mr. : Booklet entitled
F. D. Smith : "Growth Trends in the
: New England Economy,"
: by Joseph A. Erickson,
: President of the Federal
: Reserve Bank of Boston,
: January, 1950.

MR. SMITH: Exhibit 283 is a publication of an article reprinted from the Harvard Business Review of March 1948, entitled "New England Economic Prospects."

EXHIBIT 283.....filed by Mr. : Booklet entitled
F. D. Smith : New England's Economic
: Prospects," reprinted
: from Harvard Business
: Review, March, 1948.

THE CHAIRMAN: Is that all?

MR. SMITH: That is all, my lord.

MR. EVANS: May I say that my friend has the substance of what Mr. McDougall gave in evidence in our Brief in October. He comes along on the eve of argument and he produces a volume of Exhibits, I suppose upon which he is going to base his argument. Now, I suggest to the Commission that at this stage it is a most improper proceeding to offer unproved a lot of Exhibits without at least indicating what he is going to look at in those Exhibits. I think it is putting a

burden on us that is intolerable, to accept a sheaf of Exhibits the substance of which we do not know, the purpose of which we do not know, and even as to the authorship of which we have no knowledge.

MR. SMITH: Well, as far as that objection is concerned, the author of most of these Exhibits is the D.B.S.

MR. EVANS: Well, that may be true.

MR. SMITH: That is not an unknown author.

MR. EVANS: But they may require interpretation, and it may be that they should be interpreted by somebody who is an expert in interpreting statistics of that kind, right on the eve of argument.

MR. SMITH: The evidence of Mr. Matheson was given before the evidence of Mr. McDougall, and these three Exhibits relating to New England are with a view to throwing more light on the question which Mr. McDougall raised as to the relative economy of the Maritime Provinces and of the New England States.

MR. EVANS: That was all in our Brief, Mr. Smith.

THE CHAIRMAN: Well, of course, if this were a case in court I would say that these Exhibits could not be received now unless an adjournment was granted.

MR. EVANS: I was not putting it on the basis of - -

THE CHAIRMAN: I say that is what we would do; but here, of course, the object of our proceedings is different.

MR. SMITH: I personally know nothing about this matter. Mr. Matheson, who was working on his own

brief, asked me if I would ask the Commission for leave to tender these Exhibits, because they bear on the question.

THE CHAIRMAN: What question?

MR. SMITH: They bear on the question of the geographic and economic handicaps of the Maritime Provinces. It is one of the subjects of reference.

MR. EVANS: I am merely putting it on the basis that we come along on the eve of argument, and we simply cannot be expected to take time to look through those and see - -

MR. SMITH: Well, I am in the hands of the Commission.

THE CHAIRMAN: Can you tell me this: have you read them yourself?

MR. SMITH: No, I have not, my lord.

MR. EVANS: I think my friend ought at least to take the responsibility of saying he thinks they are relevant and helpful.

MR. SMITH: Well, I have glanced at them, and although one of these looks very formidable, I am instructed by Mr. Matheson in connection with one of them that there is only one paragraph of this document, and that is as to whether or not population figures themselves are useful market indicators of the income or habits or anything else.

THE CHAIRMAN: Of course, it may turn out that some of them or all of them are not contentious at all; I do not know.

MR. SMITH: I do not think so, my lord.

THE CHAIRMAN: You do not think what?

MR. SMITH: I do not think they are contentious. These D.B.S. Exhibits are just for the purpose of bringing this factual material down to date. You will remember it is nearly a year since he gave his evidence, and these are later D.B.S. - -

THE CHAIRMAN: Yes, but he was examined at great length on the evidence he did give.

MR. SMITH: Yes. For instance, these are later publications that have just come out from D.B.S. However, I am not pressing the matter, my lord.

THE CHAIRMAN: Well, we will take them for the time being, without deciding anything.

MR. COVERT: Mr. Chairman, the next subject is that of the Canadian National-Canadian Pacific Act of 1933 and amendments. That appears in the Order-in-Council setting up this Commission as No. 2 (e). I wanted to state that back in October, I think it was October 21, I wrote to both the counsel for the Canadian National and the Canadian Pacific, and I suggested at that time that, although the matter was covered in the Brief of the Canadian Pacific, pages 130 to 141, we should ask both railways to be prepared at the hearings to have witnesses qualified to speak for the respective railways on the general question of the degree of co-operation which is desirable and on the results which might be achieved, and that this would give an opportunity to Provincial counsel and to Commission counsel to examine such witnesses in order to obtain for the Commission as much information as possible on this subject.

I referred the railways particularly to the Brief of the Province of Nova Scotia, pages 44 and 45, in connection with the testimony before the Duff

Commission to the effect that savings of some \$6 million to \$30 million would be possible, and to the specific references to the pages of evidence in the Duff proceedings outlined in the Nova Scotia Brief. I referred to the sections of the Duff Commission Report dealing with abandonment proposals on page 42, and duplication of railway mileage on page 41. I said this:-

"It seems to me that the witnesses should be prepared to deal with these matters and to enlighten the Commission on such phases as to whether or not there have been any changes in the situation since then, and it seems to me also that the railways should likewise be prepared to fully discuss the question as to whether or not any abandonment of lines might take place because of the elements of truck and bus competition," and so on.

I sent similar letters to both Mr. O'Donnell and Mr. Evans.

On the following day I wrote to counsel for the various provinces and advised them that it was the intention of the Commission to request both the C.N. and the C.P. to have available at the Ottawa hearings, witnesses prepared to deal with the subject of Canadian National-Canadian Pacific co-operation under the Canadian National-Canadian Pacific Act, and expressed the hope that Provincial counsel will be prepared to examine such witnesses with a view to obtaining any information which they may desire.

Both the railway counsel advised me that they would have witnesses here, and I believe that the Canadian Pacific have Mr. Armstrong and the Canadian National have

Mr. Fairweather here for that purpose, to give such information as is desired.

THE CHAIRMAN: Did you say that Mr. Armstrong is here now?

MR. COVERT: Yes, Mr. John Armstrong, Chief Engineer.

THE CHAIRMAN: It is another Mr. Armstrong?

MR. COVERT: Yes.

MR. SPENCE: I have no objection to going first, my lord, if that is all right with Mr. O'Donnell.

MR. O'DONNELL: That is quite satisfactory to me.

THE CHAIRMAN: Is Mr. Spence calling Mr. Armstrong?

MR. COVERT: Yes.

THE CHAIRMAN: All right, Mr. Spence.

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JOHN E. ARMSTRONG CALLED

MR. SPENCE: This part of the evidence by Lord and members of the Commission, is directed to clause 2 (e) of the Order in Council, which reads:

"Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants."

In part 1 of the Canadian Pacific submissions to the Commission, reference will be found to this subject at pages 130 to 141 inclusive. For some reason there were several typographical errors that crept into our brief that perhaps I should correct now.

On page 132, the next to the last figure in the right hand column of figures which now reads 39,574, should read 39,594.

On the next page, page 133, the third last figure in the right hand column of figures, which now reads 59,720, should read 59,730.

On page 134 in the second item from the bottom of the page, that is, the Louise-DeLorraine abandonment proposal, that part of it reading "C.P. abandon 56.3 miles" should read "C.N. abandon 56.3 miles".

On page 136, the first line under the underlined title at the top of the page, which reads "Abandon either C.P.R. or Quebec Central" should read "Abandon either C.N.R. or Quebec Central"

On page 139 at the end of the outline submission at the top of the page, the very last line of the outlined submission reads "Increase of 267%". That should read "increase of 170%." The figure 25,218,400,000 freight ton miles is 270% of the preceding figure 9,353,118,000, but the percentage increase is 170%, not 267, so that 267% should be changed to 170%.

That is the total of the corrections that I have to make.

Now, we have Mr. Armstrong here, my Lord, and, with the permission of the Commission, I will proceed.

THE CHAIRMAN: Yes.

EXAMINED BY MR. SPENCE. Mr. Armstrong, you are chief engineer of the Canadian Pacific Railway Company?

A. I am.

Q. Could you give me an outline of your career in the profession of engineering with the Canadian Pacific?

When did you graduate in your engineering course?

A. I graduated from Cornell University in 1908 with the degree of C.E.

Q. Then what position did you enter after graduating?

A. My first in railway employment was as assistant on Engineer Corps of the Pennsylvania Lines west of Pittsburgh, at Cleveland, Ohio.

Q. And could you just proceed from there and tell the Commission what your positions have been.

A. In August 1912 I became assistant engineer, Canadian Pacific Railway, in the Chief Engineer's Office at Montreal, in 1928 I was appointed Assistant Chief Engineer, Canadian Pacific Railway, and in 1939 was appointed Chief Engineer of the Canadian Pacific Railway.

Q. And that is the position that you hold at the present time?

A. That is the position I hold at the present time.

Q. I understand, Mr. Armstrong, that you are the President of the Engineering Institute of Canada?

A. That is correct.

Q. And I believe a Past-President of the American Railway Engineering Association?

A. That also is correct.

Q. And you are a member of the Executive Committee of the Canadian Standards Association?

A. Yes sir.

Q. Now, I understand that you have acted on the joint co-operative committee under the Canadian National-Canadian Pacific Act?

A. Yes sir.

Q. When were you appointed a member of the committee?

A. I was appointed a member of the original Canadian Pacific section of the Joint Co-operative Committee in December 1932. I was made chairman of the C.P. section in 1934, and was relieved from work on that committee in 1938. Since 1938 I have had indirect but fairly consistent contact with the work of the Canadian Pacific section through my now assistant Chief Engineer, R.B. Jones, who was a member of the Canadian Pacific section since I retired from that committee.

Q. Now, Mr. Armstrong, to open this subject, perhaps you might read from Part 1 of the Canadian Pacific submission, commencing at the bottom of page 130 and going on for several paragraphs.

A. I shall read commencing on page 130 the text immediately following the heading "Further Submissions:"

"In reviewing the results achieved under the Canadian National-Canadian Pacific Act 1933, and subsequent amendments thereto, an appreciation of the circumstances existing prior to and surrounding the passage of the Act is desirable.

For many years prior to the enactment of the above statute the Canadian Pacific had joint arrangements of various kinds with other railways.

These arrangements may be classified under two headings:

- (1) Joint facility agreements, whereby one company is granted the right to joint use of the facilities of another company. An example of this type of arrangement is the Toronto - Hamilton joint section involving the use by the Canadian Pacific of the Canadian National line between these points.
- (2) Joint ownership of facilities whereby two or more companies construct or acquire facilities for joint use. An example of this type of arrangement is the Toronto Terminals Railway Co., in which the Canadian Pacific and Canadian National each own one-half interest.

At the present time Canadian Pacific is party to some 83 joint facility agreements involving facilities which it is estimated have a probable capital value of approximately \$115,000,000 and participates in joint ownership of two jointly used facilities, involving a further probable capital value of approximately \$27,000,000. These co-operative enterprises were entered into voluntarily by the companies concerned, with the approval of the Board where necessary," - the Board being the Board of Transport Commissioners - "for the purpose of avoiding duplication of facilities and of effecting economies in maintenance and operation."

Q. I understand, Mr. Armstrong, that you have set out in a list which you propose to file as an exhibit the joint arrangements in which the Canadian Pacific participates?

A. I have.

MR. SPENCE: Perhaps that might be filed as exhibit 284. It is headed, "Canadian Pacific joint arrangements of various kinds with other railways, not including arrangements made under the provisions of the Canadian National-Canadian Pacific Act 1933."

EXHIBIT 284

Canadian Pacific joint arrangements of various kinds with other railways, not including arrangements made under the provisions of the Canadian National-Canadian Pacific Act 1933.

MR. SPENCE: Q. Mr. Armstrong, would you just explain briefly what this exhibit is intended to show?

A. On the first page of the exhibit there is the statement of the number of arrangements, 85. That is the sum of the 83 arrangements of one type and two of the other type, in regard to which I have just read from the Canadian Pacific Submission. The valuation of facilities involved as at December 13, 1948, \$142,020,385, which is the sum of the \$115 million in round figures and the \$27 million also in the text from the submission which I have read. Of the \$142 million, \$53,196,079 is estimated. The reason that amount is to be estimated is that the agreements are of various kinds. Some agreements have a so-called Capital Account set up in them in which the facilities are valued initially in connection with the agreement and additions to the property are added to the Capital Account so that there is a current capital account in regard to that particular facility. Other agreements are based on wheelage charges, rental charges which are not based on valuation, and various other items, so that there is simply a rental with no capital charge in the agreement. Where the latter situation exists there is no official value set on the property, and in those cases it has been necessary to estimate as nearly as may be the value of that property, in this case as of December 31, 1948, which is the time we

used for the valuation - valuation as of December 31, 1948.

COMMISSIONER INNIS: A very precise estimate.

THE WITNESS: I think the estimated figures are not particularly precise. The figures in the agreements are actually taken from the agreements - that is, the odd dollars and all - they bring out a precision which is not warranted for the whole.

On the second page of the exhibit, which is headed "Summary of Attached Details," the total of \$142,020,385 is divided into three parts. First there are the facilities owned by Canadian Pacific and used by other railways. The total for that is \$48,969,764. It is divided between Canadian Pacific facilities used by the Canadian National - there are 24 instances of that, having a value of \$22,928,776 - and there are 14 instances of use by other railways, the property having a value of \$26,040,988. The sum of those two items gives the \$48,969,764, which is the value of C.P.R. property used by other railways.

THE CHAIRMAN: Are all these properties in Canada, Mr. Spence?

THE WITNESS: No, sir.

THE CHAIRMAN: Q. They comprise, then, the whole system both inside and outside Canada?

A. Only the C.P.R. system proper, not the Soo Line or the D.S.S.&A. or other - - -

Q. Insofar as your system proper extends to the United States?

A. Yes sir. An example of that are the line across Maine, where we use Maine Central property, and down in Vermont, where there are three of us using the same property, three railways use the same property, at St. Johnsbury. That comes in, I think, chiefly under the second group of items, which has to do with the facilities owned by other railways and used by the Canadian Pacific. There are 29

instances of where the Canadian Pacific uses Canadian National property having a value of \$63,043,573, and 16 instances where the Canadian Pacific uses the property of 11 other railways having a value of \$14,645,813, the sum of those two being \$77,689,386.

COMMISSIONER INNIS: Q. How do you account for that wide discrepancy between the Canadian National and Canadian Pacific, one 63 and the other 22?

A. There were perhaps more constituent lines in the Canadian National than there were in the Canadian Pacific.

Q. What do you mean by constituent lines?

A. I mean that we had agreements with various railways, the Canadian Northern and the Inter-Colonial and others, before the Canadian National came into corporate existence, so we had opportunity for more. - - -

Q. It really means more railways than the Canadian National?

A. Yes, sir. The sum of those two figures of used property is \$126,659,150, but in that there are several instances of duplication. That is, for example, the Lachine Bridge at Montreal is owned by the Canadian Pacific but is used by the New York Central and by the Napierville Junction Railway, which is the extension of the Delaware and Hudson Railroad into Canada. Where that exists - and that will be shown in greater detail on the following pages - where that exists, duplicate use of that kind has been deducted from the value, from the sum of the two preceding figures, and that duplication amounts to \$11,922,482, leaving a net value of facilities used jointly of \$114,736,668, which in the submission is stated as approximately \$115 million, being simply a round figure in the submission, this being the detail of that round figure.

THE CHAIRMAN: Well, we have to adjourn for a few minutes now.

-- (Recess)

THE CHAIRMAN: Mr. Spence, I may say we have been considering this Exhibits in the first place it shows what you have done outside the Act.

MR. SPENCE: Yes, my lord, that is the point of the Exhibit.

THE CHAIRMAN: We of course are mainly concerned with what has been done under the Act. Anyhow, this I think is very good and useful material, but we do not think it is necessary to go through it in detail the way you are doing.

MR. SPENCE: Oh, no. I was hoping we would not spend any more time on it, my lord.

There is just one thing that is indicated by this Exhibit, however, that there were co-operative measures of a kind dating back many years before the Canadian National - Canadian Pacific Act, and perhaps we do not need to do more than just point that out.

THE CHAIRMAN: These are all measures of co-operation entered into by the Canadian Pacific, some of them with the Canadian National and some of them with other companies.

MR. SPENCE: Yes, my lord.

Q. Then, Mr. Armstrong, perhaps you might go back to the Canadian Pacific Brief and read commencing with the last paragraph on page 131?

A. Continuing with the Canadian Pacific submission, Part I, just below the centre of page 131, I read:-

"With the onset of the depression in 1930, traffic on both major railways declined sharply to a point where it became impossible to operate either of them on a profitable basis. In 1933,

following the report of the Duff Commission, Parliament enacted the Canadian National-Canadian Pacific Act which directed the ^{two} railways to endeavour to agree upon co-operative measures for the purpose of effecting economies. In compliance with the terms of the Act many studies were undertaken and various co-operative arrangements formulated and put into effect embracing joint trackage agreements, joint station and terminal agreements, pooling of competitive passenger train services and other measures such as joint freight handling and joint advertising. The practice was that the net savings were shared equally by the two Companies."

Q. Now, the paragraph you have just read refers to the depression of 1930 and indicates that the decline of traffic at that time led to the Duff Commission and eventually to the passage of the Canadian National, Canadian Pacific Act, 1933. Can you elaborate a little of the events immediately preceding the passage of the Act?

A. Co-operation as contemplated by the Canadian National-Canadian Pacific Act 1933 may be said to have been initiated by a motion recorded on page 65 of the minutes of the proceedings of the Senate of Canada of Friday the 25th November, 1932, which reads:-

"That, in the opinion of the Senate, for the purpose of expediting the attainment of all possible economies

by mutual co-operation pending the determination of the present railway bill

'A' a certain number of officials of the

Canadian Pacific Railway Company and an equal number of officials of the Canadian National Railways should meet to co-operate in eliminating some of the duplication of railway service with a view to economy in this service."

That is the end of the quotation, and the bill "A" referred to I understand was what eventually came out as the Canadian National-Canadian Pacific Act, 1933.

Under date of 29th November, 1932, the Chairman and President of the Canadian Pacific Railway Company wrote to the acting President of Canadian National Railways with a view to initiating such action as would implement the intent of this motion.

On the 15th of December 1932, the Chairman and President of Canadian Pacific Railway Company appointed Messrs. Grant Hall, W. N. Tilley, K.C., and himself a sub-committee of the Canadian Pacific executive committee, and on the 16th of December, 1932, the acting President of Canadian National Railways appointed Messrs. J. E. Labelle, F. K. Morrow and himself a sub-committee of the Canadian National executive committee to deal at the highest level with co-operative matters between the railways. These two sub-committees, with such changes in personnel as were made from time to time, became known as the joint executive committee.

Q. This committee really, then, was formed before the Act was actually passed?

A. It was formed in December 1932, some five months more or less prior to the passage of the Act.

COMMISSIONER INNIS: That is a committee of six?

A. A committee of six.

Q. Who was the Chairman?

A. The Chairman and President of the C.P.R. was Chairman of the C.P. section, and the acting President of the Canadian National Railways was Chairman of their section.

Q. It was a joint Chairmanship?

A. It was really two sections which combined to form the joint executive committee.

It having been decided that each railway would appoint three technical officers to deal with co-operative matters and report thereon to the joint executive committee, the Canadian National appointed Messrs. F. W. Fairweather, Director of Bureau of Economics (Chairman), D. Crombie, Chief of Transportation, and C. S. Gzowski, Chief Engineer Construction, and the Canadian Pacific appointed Messrs. H. J. Humphrey, Assistant to the Vice-President (Chairman), J. E. Armstrong, Assistant Chief Engineer, and E. A. Leslie, Deputy Comptroller. These two groups, with such changes in personnel as were made from time to time, became known as the joint executive committee.

On the 22nd December, 1932, the first instructions to the joint co-operative committee were issued jointly by the acting President, Canadian National Railways and the Chairman and President, Canadian Pacific Railway Company, and on the 28th December, 1932, this committee held its first meeting.

The Canadian National-Canadian Pacific Act, 1933, became law on May 23, 1933.

Q. Now, the Canadian National-Canadian Pacific Act, 1933, after providing in Section 16, sub-section 1, that the railways shall endeavour to agree upon co-operative measures, provides for a method of arbitration in case of disagreement, and the arbitration sections are sections 17 and several sections thereafter. What is your view as to the principle established in the setting up of this arbitral tribunal?

A. As I have already stated, co-operation among railways is not a new idea. The 83 items listed in the Exhibit filed are the results of voluntary co-operation. They were ordinary business deals under which each participant profited. The resultant savings accrued to the railways and over-all railway costs were reduced accordingly. In my opinion mandatory co-operation under the Canadian National-Canadian Pacific Act, 1933, was a new concept of co-operation. It provides for equitable (which the railways have interpreted as meaning as nearly as may be equal) distribution between them of burden and advantage in the co-operative projects, and this seems a reasonable requirement. It also provides for an arbitral tribunal which may be invoked by either railway to arbitrate between them in connection with any co-operative project in regard to which they are unable to reach accord. Such arbitration would seem to go beyond simple co-operation, in that either railway is perhaps placed in a position to force upon the other a so-called co-operative project which is not acceptable to that other railway. The invocation of arbitral tribunal would seem to be the antithesis of co-operation, and might be expected to have an unfortunate effect

Mr. Armstrong

upon the joint co-operative effort. Perhaps for this reason the management of neither railway has invoked such a tribunal.

Q. Now, it has been suggested to this Commission that the Canadian National-Canadian Pacific Act, 1933, might be altered in such a way as to force co-operation upon the railways and to determine what, if anything, should be done in connection with each co-operative project, by whomsoever suggested. What are your views as to that suggestion?

A. Competition and co-operation are not particularly happy bed-fellows. There are projects in which competitors can co-operate to their mutual advantage, but such projects are not as numerous as might be expected. Each co-operative project involves a unification of competitive facilities or operations involved in that project. Invocation of the arbitral tribunal already provided for in the Act would add an element of force to such co-operation or unification. The creation of a tribunal to which either railway or any other party might appeal to force co-operation or piecemeal unification of the railways would in my opinion result in curtailing the efforts of the railways to co-operate. Force and co-operation seem to me to be impossible bed-fellows.

THE CHAIRMAN: You are talking now of Section 17, are you?

MR. SPENCE: Yes, my lord, and the suggestion that has been made to this Commission, that the Act might be amended in some way so as to force the railways to co-operate. At the present time, of course, the Act provides that the railways are to endeavour to agree and continuously

to endeavour to agree to effect co-operative measures, and then the Act goes on in Section 17 and following sections to provide for the tribunal to be set up at the request of either railway to decide upon disputes that arise between the railways when they fail to agree on a subject. Now, that tribunal has never been invoked, but neither railway has felt called upon to invoke the tribunal, or at any rate it has been reluctant to invoke the tribunal. Now I think the suggestion is possibly that, regardless of the desires of the railways, if they do come to an impasse at any time they must have the tribunal, and I believe that is what Mr. Armstrong is speaking of now -- the idea of trying to compel railways to co-operate.

THE CHAIRMAN: Has it been suggested to us that there should be such a compulsion?

MR. SPENCE: Yes, my lord. The Province of Nova Scotia, and I believe the Province of Alberta endorses the submission, of the Province of Nova Scotia in that respect.

MR. FRAWLEY: The Canadian Federation of Agriculture, too, my lord.

THE CHAIRMAN: Then I suppose that those who are in favour of compulsion set out the method by which the compulsion would be exercised; I would assume that.

MR. SPENCE: I do not think they do, so far as I know, my lord. I think they just say that some steps should be taken to force co-operation upon the railways, and our feeling is that that is a contradiction in terms.

MR. FRAWLEY: The Canadian Federation of Agriculture, at page 7536 of the Transcript, has two specific recommendations.

THE CHAIRMAN: What are they?

MR. FRAWLEY: The Canadian Federation says:-

"Since the methods adopted under this Act have been inadequate, and results negligible, we propose that a new approach be made to the problem.

We recommend:-

1. Through amendment to the Canadian National-Canadian Pacific Act, the immediate appointment of a continuing tribunal which would be given authority to undertake research and investigate all possible ways to reduce duplication of services and wasteful competitive practices; such tribunal to propose from time to time to the railway companies such measures the findings of their research show would be fruitful in effecting economies; and that the tribunal report each year to Parliament

recommendations which they have made and the extent to which these have been adopted and carried out by the railways;

2. That the Railway Act be amended to provide that the Board of Transport Commissioners when considering general freight rate revisions must take into consideration the extent to which the railways have endeavoured to bring about economies by co-operation or in accordance with the recommendations made by the tribunal proposed in Recommendation 1."

Now, I say at once, my lord, that there does not appear there to be any provision that this tribunal has power to do more than to propose from time to time to the railway companies their findings with respect to what measures could be fruitful in effecting economies.

THE CHAIRMAN: Then that is followed up by a statement that the Statute should be amended.

MR. FRAWLEY: Oh, yes, two amendments, an amendment to the Canadian-National-Canadian Pacific Act and an amendment to the Railway Act.

THE CHAIRMAN: Amended to make compulsion applicable.

MR. FRAWLEY: To make these recommendations applicable, that is right, sir.

COMMISSIONER INNIS: Well, would you favour an amendment, Mr. Spence, removing the reference to the arbitration tribunal, since it has never been used?

MR. SPENCE: No, I do not think so, Dr. Innis. Our position is that the Act should remain as it is.

THE CHAIRMAN: Does anybody suggest that the Act should be repealed entirely?

MR. SPENCE: No, my lord.

MR. O'DONNELL: Well, the Act could not be repealed, my lord, I think, because it deals with a lot of things that are not directly related to co-operation. For instance, it deals with the number of directors the Canadian National Railway is to have.

MR. FRAWLEY: It is really two statutes in one.

MR. O'DONNELL: Two or three statutes in one. It might quite well be that some recommendations be made, while we are on that point, for consolidation of these statutes. Insofar as the Canadian National Railways is concerned, in order to get a proper appreciation of its corporate set-up, its administrative power, and so on, one must go to Acts that have names that in no way indicate that they have anything to do with the corporation.

For instance, the Canadian National-Canadian Pacific Act is where one finds how the Canadian National Railway is to deal with its annual budget, how many Directors it is to have, and so on.

THE CHAIRMAN: It is parts 2 and 3, the portions of the Act which deal with co-operation.

MR. O'DONNELL: Yes, my lord.

MR. SPENCE: And it is only those parts that this evidence is directed to, because of course the first part is something that we are not involved in in any way, and I take it, although the Order-in-Council does not limit it to parts 2 and 3 of the Canadian National-Canadian Pacific Act, that that was the intention of the Order-in-Council.

COMMISSIONER INNIS: Did Nova Scotia have any specific recommendations as to procedure, Mr. Spence?

MR. SMITH: No, Dr. Innis. The report was that the matter should be studied with a view to determining -- we haveno information as to specific cases, and what we recommended was that a study be made. That is as far as we went.

COMMISSIONER INNIS: A study be made by whom?

MR. SMITH: That a study be made either by the Commission or some other body.

THE CHAIRMAN: We are largely, not altogether a court, but we are largely confined in our study by the material that you bring to us. You have not anything, Mr. Smith?

MR. SMITH: No, I have no suggestion to make as to amendment of statute, but I would be prepared to support the recommendations made by Mr. Hope of the Canadian Federation.

THE CHAIRMAN: You would support those?

MR. SMITH: Yes.

COMMISSIONER ANGUS: My recollection is, Mr. Spence, that in Mr. Evans' cross-examination of Mr. Moffatt -- I may be wrong -- the suggestion was that one railway might be blamed for not co-operating when it was ready and willing to co-operate, and I remember asking at that point whether this section about the arbitral tribunal would not deal with that if a railway had not pressed its wish to co-operate to the point of invoking the tribunal, had it really any cause for complaint if it was blamed?

MR. SPENCE: I think that that subject is touched on in part at any rate, Dr. Angus, in our Brief

later on. Mr. Armstrong will read that part, at least I will ask him to read it, later. That refers to the possibility, for instance, of an application for an increase in rates being requested and that being delayed while the Board made an investigation of all co-operative measures to be sure that all possible economies had been achieved, and if some economies had been prevented by the failure of one company to co-operate, the other company would suffer as a result of failing to get its rate increase.

COMMISSIONER ANGUS: Yes, that is the point.

THE CHAIRMAN: A failure of one company to co-operate; would that be, then, the failure of one company to accept an offer of co-operation made by the other company?

MR. SPENCE: Well, a failure of one company or refusal of one company to enter into a project proposed by the other.

THE CHAIRMAN: By the other company.

MR. SPENCE: Yes.

THE CHAIRMAN: Confined to the two companies.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: There is no third party proposed.

MR. SPENCE: No third party proposed.

THE CHAIRMAN: These arbitration tribunals, how far does their jurisdiction extend? Are they only to deal with matters which arise after the two companies have come to an agreement?

MR. SPENCE: That is my understanding, my lord. The tribunal is to be invoked by one railway which finds that it cannot persuade the other railway to enter into a co-operative project that it - -

THE CHAIRMAN: Pardon me. Did you say, which finds that it cannot persuade the other railway to enter into?

MR. SPENCE: To enter into a particular co-operative project.

THE CHAIRMAN: I see. That is going further than I had mentioned. You see, there are two things. Let us suppose you come to an agreement on co-operation in some particulars and then later on disputes arise about that agreement; that could go to this tribunal?

MR. SPENCE: That could go to this tribunal, yes, at the invitation of one of the railways.

THE CHAIRMAN: And then if one railway offered to co-operate and the other railway refused, could that question also go to one of these tribunals? Could that tribunal order that co-operation?

MR. SPENCE: Yes, but - -

THE CHAIRMAN: Is that so? That is a fact?

MR. SPENCE: Yes, my lord, I think that is correct. But there must be a dispute between the two railways under section 17 and one railway must then invoke the tribunal. The tribunal does not exist until it is invoked in respect of the particular dispute.

COMMISSIONER ANGUS: Is the right to invoke such a tribunal an answer to the argument that both railways may be penalized for the fault of one?

MR. O'DONNELL: As I see it, at the present time, - -

THE CHAIRMAN: I see the word "dispute" is defined by the Act.

MR. O'DONNELL: Yes, my lord, Section 3(b). That defines the word "dispute", and it takes in this very

that is being spoken of. It includes their failure to agree concerning any measure or plan.

THE CHAIRMAN: "Proposed" -- proposed by whom?

MR. O'DONNELL: By either of the railways.

THE CHAIRMAN: "...or any matter of detail arising out of or ancillary to any measure, plan, or arrangement settled upon...." you have the two cases there --

MR. O'DONNELL: I think Dr.Angus raised that question some months back, and when we looked into it, it will be remembered that the matter turned upon the definition of the word "dispute" which is referred to in section 17, sub-section 3, and it is defined in this section 3 (b), and it covers both cases.

THE CHAIRMAN: Now, as I say, "dispute" means any failure of the Canadian National and the Pacific Company to agree concerning any matter upon which by Part II of this Act they are authorized to agree.

MR. O'DONNELL: And it includes their failure.

THE CHAIRMAN: Yes. Does not that go very far? "Dispute" means any failure of the 'Canadian National and the Pacific Company -- that is both together -- to agree concerning any matter upon which by Part II of this Act they are authorized to agree.

MR. O'DONNELL: That is right.

THE CHAIRMAN: That is pretty radical, isn't it?

MR. O'DONNELL: Oh, yes.

THE CHAIRMAN: For instance, they are authorized to agree as to the joint use of terminals

Then if they do not agree on the joint use of terminals all over the country, there is a dispute.

MR. O'DONNELL: That is right.

THE CHAIRMAN: And what do you do then?

MR. O'DONNELL: Then either party can ask for the setting up of a tribunal, and the tribunal has the powers - -

THE CHAIRMAN: Pardon me a moment. The tribunal in case of disagreement -- the heading is "Arbitration in Case of Disagreement."

MR. O'DONNELL: That is right.

THE CHAIRMAN: But this first interpretation of the work "dispute" does not suggest any disagreement between the railways. It says, "any failure of both of them to agree concerning any matter upon which by per Part II of this Act they are authorized to agree."

MR. O'DONNELL: Yes, and it goes on then, "and includes their failure to agree concerning any measure, plan or arrangement proposed or any matter of detail arising out of or ancillary to"

THE CHAIRMAN: Well, that is an extension of the interpretation.

MR. O'DONNELL: Yes.

THE CHAIRMAN: But the primary interpretation is their failure to agree concerning any matter upon which by Part II they are authorized to agree. Do you not suppose, though, that it means that here is a matter upon which they are authorized to agree, and they have approached it; on approaching it they find that they cannot agree; then that constitutes a dispute; is that it?

MR. O'DONNELL: That is the way I interpret it.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Suppose neither of them approach the matter?

MR. O'DONNELL: Then there is no dispute.

COMMISSIONER INNIS: Is not that what has happened? That is to say, you have agreed not to use the arbitration tribunal.

MR. O'DONNELL: Well, I would not say there is any agreement not to do that. I do not think that is the case. I think no case has arisen; that is what it amounts to.

THE CHAIRMAN: Would this Act as interpreted here authorize any third party to come along and say, "Here, these two railways are authorized to co-operate in this particular, this place, and they have not got together to co-operate, therefore I want to invoke the Act against them, because they have failed to agree to co-operate."

MR. SPENCE: I suggest the answer to that is in sub-section 2 of Section 18, my lord, which says:-

"The powers of the Tribunal may be invoked by either Company by written application to the Chief Commissioner...."

MR. O'DONNELL: I do not think it is extended to third parties.

MR. SPENCE: No.

THE CHAIRMAN: No. Perhaps it is loose drafting.

MR. O'DONNELL: We would have an awful lot of tribunals, I think, if everybody was entitled to ask for them.

THE CHAIRMAN: Then I take it that a proper interpretation of the system is this, that the two companies must first get together, one must approach the other, before there can be any question of a dispute; is that right?

MR. O'DONNELL: Well, I think they would at least have to indicate that one or the other is not willing to go along before one or the other could ask that a tribunal be set up.

THE CHAIRMAN: There is no room for third parties intervening.

MR. O'DONNELL: I do not think so.

THE CHAIRMAN: And invoking the Act against them. I see; all right.

COMMISSIONER ANGUS: Mr. Spence, do not leave this question outstanding.

MR. SPENCE: I was coming back to that, Dr. Angus. I think that possibly there is at least a partial answer, as you suggest, to the complaint of one company that it is being delayed because of the failure of the other company. On the other hand, invoking the arbitral tribunal would itself mean a considerable delay and probably very extensive proceedings, and I think also that there are cases in which there are quite legitimate objections by one company to going into a proposal; that is, that it would receive injury or damage from the proposal exceeding any recompense that it might hope to get in savings.

THE CHAIRMAN: Pardon me. If one of the companies took that stand on a proposal being made, would then the question go to one of these tribunals

till the other company pressed it?

MR. SPENCE: Not till the other company pressed it; and I suggest that in many cases when the objections of one company to entering into an agreement are brought forward, the other company sees that there is reason in what is said and therefore does not press for the tribunal. But then if we come up to a rate case and the opponents of the rate increase find that here is a case in which the railways have failed to go ahead with the proposal that has been made, they may still delay the thing, even though there was every reason for not invoking the arbitral tribunal.

COMMISSIONER ANGUS: The legislation has created a machinery for arbitration which has never been used, and it has been suggested that that may be because there has been a gentleman's agreement not to use it; but another reason -- one I think you suggested -- is that it looked so cumbersome to both railways that neither thought it worth while to use it.

MR. SPENCE: Well, I do not know that it was just because it was cumbersome. I do not think so. I think both railways have felt that once they started an arbitral tribunal they were getting into what really amounted to litigation over a thing that should be regarded as a matter of co-operation.

THE CHAIRMAN: Tell me this: I just want to know this: does the Act allow this to be done: if one of these railways approaches the other and says, "Now, here is an opportunity, let us grasp it and co-operate," and the other company says, "No, we have reasons for not wishing to co-operate," could then the opponent of

the company that made the proposal go to any of these tribunals and say, "We want an order compelling this other company to co-operate"?

MR. O'DONNELL: Certainly.

MR. SPENCE: I would think so, yes, my lord.

THE CHAIRMAN: You think the Act says so?

MR. SPENCE: Yes.

MR. O'DONNELL: If I might interject in respect to the remark -- I did not quite catch its complete significance -- of Dr. Angus, that there was a gentleman's agreement or might be a gentlemen's agreement -- is that what you suggested?

COMMISSIONER ANGUS: Well, Dr. Innis asked if there was an agreement not to use this method.

MR. O'DONNELL: No, there definitely is not an agreement not to use it.

THE CHAIRMAN: It might be a gentlemen's agreement, or it might be that the method itself appeared too cumbersome to be worth using, and I wondered if that was going to lead to any proposal for its simplification, for expediting it.

MR. O'DONNELL: There is definitely no agreement not to use it, and any time that occasion might arise when as far as the Canadian National is concerned it would choose to use it within the limits of the Act, it would use it. There is no question about that.

COMMISSIONER INNIS: But there is a fear of retaliation on the part of both.

MR. O'DONNELL: That I do not know.

COMMISSIONER INNIS: That if it is used it may invite some proposal from the other side which will be

equally objectionable.

MR. O'DONNELL: That might be, but no occasion has arisen, apparently, when it was invoked, but that is not by reason of any agreement -- those are my definite instructions -- and with respect to the matter of dealing a rate increase, I think the answer there, Dr. Angus, is that at the present time under the Act, the Board of Transport Commissioners has no jurisdiction over that part of the matter at all. It is so said in the 20 Per cent Judgment at page 40; it is expressly stated there in the judgment of the Chief Commissioner. I am reading part of what is under the heading "Canadian National-Canadian Pacific Co-operation":

"The Canadian National-Canadian Pacific Act does not confer upon the Board any duty or authority to require the railway to study and undertake co-operative measures with a view to effecting economies, or to review and investigate what measures they have taken, or might have taken under such Act.

As indicated during the hearing this is not a matter which would seem to invite special enquiry on our part. Nothing can, therefore, be gained by entering upon any extended discussion of the subject at this time."

So that a rate increase could not be delayed by reason of that as the law stands at the present time, because a report concerning the Canadian National-Canadian Pacific Act is made each year to Parliament, and the Board has no jurisdiction in that matter.

I might just, with my friend's permission

draw to the attention of the Commission Section 14 of the Canadian National-Canadian Pacific Act, which is in this pamphlet - -

COMMISSIONER ANGUS: My recollection is that our discussion arose earlier from some suggestion that the Board should have some duties or some powers.

MR. O'DONNELL: That is right.

COMMISSIONER ANGUS: And that the answer of the Canadian Pacific at that time was, no, that would be unfair because it would be punishing the innocent with the guilty; then in reply to that I asked about whether the innocent were really so very innocent if they have not invoked this matter of protecting their innocence.

MR. MacPHERSON: I think, my lord, the question arose before the Board of Transport Commissioners in this way, that when it came to a question of the Board of Transport Commissioners being asked to fix rates, then it was raised as an issue before the Board, the railways coming before the Board ^{asserting need and} and claiming they should have an increase in freight rates, then it was urged by provincial counsel that as a condition pre-requisite they should establish what had been accomplished under this Act, unless it was to be regarded as a dead letter. That is to say, when they asserted a need, and on the basis of that need asked for a freight rate increase, although the Board had no jurisdiction over them, at the same time it was incumbent upon the railways to establish what they had done in that connection.

MR. FRAWLEY: Might I ask whether the railways propose to file the annual reports to Parliament required by section 14 of the Statute? It might be interesting to look at those reports, particularly to see whether or not the railways wanted Parliament to amend these unworkable provisions with respect to arbitral tribunals.

MR. O'DONNELL: Well, the provisions are not unworkable, I think. It is just that they have never been worked. They are not unworkable. It is relatively simple. If one party wants a tribunal it is set up at his request. It does not have to have any consent from the other party. All I was pointing out ---

THE CHAIRMAN: I think it is rather a peculiar statute, of course, but the essence of it is that it directs these two companies to attempt forthwith to agree and continuously to endeavour to agree.

MR. O'DONNELL: Yes.

THE CHAIRMAN: Upon such co-operative measures, plans, and arrangements as are fair and reasonable and best adapted to effect such purposes. Therefore they are further directed that when they shall so agree - once they have made an agreement they shall endeavour to provide through negotiations with the representatives of the employees affected - oh, yes, that is to safeguard the employees. Anyhow, whether there have been disputes or not, no dispute has yet been referred to any tribunal.

MR. SPENCE: That is right, my lord.

THE CHAIRMAN: Can it be said that there have been disputes, have been disagreements?

MR. SPENCE: There have been many disputes.

THE CHAIRMAN: We will divide them into two classes. Have there been any proposals made by the one company and rejected by the other, for co-operation?

MR. SPENCE: Yes, there have been; I do not think there is any doubt of that.

THE CHAIRMAN: Then, secondly, have agreements been entered into in respect of which later on disputes have arisen?

MR. SPENCE: I do not think so; not that I know of, my lord. Once the agreements were entered into both parties have carried them out.

THE CHAIRMAN: Then the only class of disputes which have arisen that you know of, have been where one railway was willing and the other railway was not willing?

MR. SPENCE: That is right, my lord, but I suggest that we have never come to the point between us where one railway has says, "We insist," and the other railway says, "we refuse."

THE CHAIRMAN: That is just the point.

MR. SPENCE: And that was the point where one would invoke the tribunal.

THE CHAIRMAN: Then you would have^{had}/to have one of these tribunals set up.

COMMISSIONER ANGUS: Are those failures reported to Parliament?

MR. O'DONNELL: I would draw your attention to section 14 of the C.N. - C.P. Act. We have to report annually to Parliament.

THE CHAIRMAN: Yes, you have to report the co-operative measures, but does that go onto say that you have to report proposals that are rejected?

MR. O'DONNELL: I do not think it goes quite that far.

COMMISSIONER ANGUS: Because they might be of interest to Parliament.

MR. FRAWLEY: Apparently it is only the Canadian National that makes the report, because the trustees are the trustees of the Canadian National.

THE CHAIRMAN: Well, we have to adjourn, I understand, now.

--- The Commission adjourned at 4.30 p.m., to meet again at 10.30 a.m. on Friday, April 28, 1950.

A.R.

Commission

ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Ottawa, Ont.
Friday, April 28, 1950.
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
FRIDAY, APRIL 28, 1950

THE HONOURABLE W.F.A.TURGEON, K.C.LL.D. - Chairman
HAROLD ADAMS INNIS - Commissioner
HENRY FORBES ANGUS - Commissioner

- - - - -

G. R. Hunter,
Secretary.

P. L. Belcourt,
Asst.Secretary.

- - - - -

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M. A. MacPherson, K.C.)	Province of Saskatchewan
C. D. Shepard)	Province of Manitoba
J. Paul Barry)	Province of New Brunswick
J. J. Frawley, K.C.)	Province of Alberta.
F. D. Smith, K.C.)	Province of Nova Scotia

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M O R N I N G S E S S I O N

OTTAWA, ONTARIO
APRIL 28, 1950.

MR. SPENCE: My lord, I think that yesterday afternoon I may have given an answer in the course of the discussion that would perhaps lead to misapprehension. I should like to make it clear now that so far as I know there has never been any case in which one company has proposed a joint co-operative project and the other company has refused to give it full study and consideration. If the impression that there had been any such case was left from any of my answers, I hope that it will now be set right.

THE CHAIRMAN: Can you go a step further and tell us whether there are cases where one company has proposed a measure of collaboration and the other company, after full study and consideration, has rejected it?

MR. SPENCE: Oh, yes; there are those cases.

THE CHAIRMAN: Does it work both ways?

MR. SPENCE: Yes.

THE CHAIRMAN: Sometimes and in some cases the Canadian Pacific was the proposer and in other cases the Canadian National was the proposer?

MR. SPENCE: Yes. My understanding is that there have been cases of that kind from both directions.

THE CHAIRMAN: How far have you a record available for our study? We have to report on the whole Act. It may be necessary for us ^{to} find out what in the opinion of one of the railways at a given time might have been done and in the opinion of the other

ought not to be done, and so on. Have you records? Have records been kept of the joint negotiations on this point?

MR. SPENCE: There are tremendous records of these matters.

THE CHAIRMAN: You say "tremendous records"?

MR. SPENCE: Yes, my lord. Mr. Armstrong, was going to go on in a few minutes to deal with blocks of projects listed in our Brief, explaining in general why one of the groups of projects had been completed and why another one had not been completed.

THE CHAIRMAN: After Mr. Armstrong is through we may have sufficient to proceed. If not, we shall let you know.

MR. SPENCE: Yes.

MR. O'DONNELL: I think at page 154 of our Brief, your lordship will see a summary.

THE CHAIRMAN: Page 154?

MR. O'DONNELL: Page 154 of the Canadian National Brief, Exhibit 214. At page 154 there is a summary of the joint co-operative committee results and it sets out - -

THE CHAIRMAN: Does that give cases where you agreed and have studied?

MR. O'DONNELL: Have agreed, ^{and} have not agreed.

THE CHAIRMAN: Have agreed and have not agreed?

MR. O'DONNELL: Those which have been studied and those which have been rejected, projects which were interrupted owing to war activity and so on. There is a summary on page 154 and on the following pages

there is - -

THE CHAIRMAN: Page 154?

MR. O'DONNELL: Yes. And in the following pages there is a whole list of projects which the joint committee considered and the various actions taken by them.

THE CHAIRMAN: Just a minute. Joint co-operative committee projects in effect, line abandonments; does that mean abandonments which actually took place?

MR. O'DONNELL: Line abandonments which were approved.

THE CHAIRMAN: Then joint use of terminal lines, co-operative committee projects.

MR. O'DONNELL: Yes.

MR. SPENCE: We have the same list in our Brief, in the Canadian Pacific's submission, at pages 132 to 138.

THE CHAIRMAN: Then you have the line abandonments approved by the Board but as you say, not effective, and then line abandonments considered by the Board but no order issued. I suppose that means no direction given. Then projects recommended but not proceeded with. Does that mean recommended by one line and not accepted by the other?

MR. O'DONNELL: Recommended by the joint committee is what I think that means, but not proceeded with.

THE CHAIRMAN: We had better go on then with Mr. Armstrong.

MR. O'DONNELL: That is quite all right. I merely interjected because I thought it was a

convenient time to do so.

THE CHAIRMAN: I am glad you did.

MR. SPENCE: I should like to say, my lord, that that list which is included in both briefs is the complete list of all proposals considered by the joint co-operative committee since the inception of the Canadian National-Canadian Pacific Act.

THE CHAIRMAN: All proposals considered by the joint committee?

MR. SPENCE: All proposals considered by the joint committee.

THE CHAIRMAN: Which were accepted?

MR. SPENCE: Accepted, rejected or not proceeded with.

THE CHAIRMAN: They would cover those cases I mentioned to you at the beginning, would ^{they,} cases where one company had proposed co-operation and the other company had declined to agree?

MR. SPENCE: Yes, my lord; after study had declined to agree.

THE CHAIRMAN: That is in the Brief?

MR. SPENCE: That is in that list.

THE CHAIRMAN: Then will you go on with Mr. Armstrong?

MR. SPENCE: I think at the adjournment yesterday there was a question asked by Dr. Angus that perhaps did not receive a satisfactory answer. Dr. Angus's inquiry was in relation to the argument in our submission at page 140 of Part I in which we submit that if the Board of Transport Commissioners were given power to refuse to grant rate increases until they

had proved that all possible co-operative economies had been made, the result would be that the innocent might suffer with the guilty, since a company that had done everything possible to make progress in co-operative economies might be prevented from getting a rate increase by another company which had possibly obstructed or delayed the proposed co-operative measures. The suggestion made by Dr. Angus was that the innocent company might have very little complaint upon this score if it had failed to invoke the arbitral tribunal when occasions arose when it might be invoked.

Perhaps there are two answers to this question. First, it is certainly the feeling of the Canadian Pacific and, I gather- although I cannot speak for the Canadian National -- that it may be the feeling of the Canadian National officers that the moment the arbitral tribunal is invoked, co-operation under the Act comes to an end. I do not mean by this that it ^{is} necessarily just a fear of reprisals as I think Dr. Angus suggested yesterday, but there would inevitably be a litigious atmosphere created immediately on the commencement of proceedings under the arbitral tribunal, and that could not fail to have its effect upon all other co-operative matters under consideration. In other words, there would be a scrambling for position, so to speak, by both companies. Of course, in the particular dispute which occasioned the invocation of the tribunal, each company would immediately commence to gather facts together and arguments together to place its own side of the case in the best possible light.

MR. O'DONNELL: May I just ask this, Mr. Spence. I take it you are speaking there with respect

to some specific project and not generally. I would not assume that you suggest that if we did not reach agreement concerning a particular project, it means there would be no co-operation on any others that might be suggested.

THE CHAIRMAN: I think Mr. O'Donnell is suggesting that as a result of this agreement order by some arbitral board compelling the other company if it did not want to do so, to go on, there might be created the atmosphere or feeling ----

MR. SPENCE: Yes, my lord. There would be a feeling created, ---

THE CHAIRMAN: Which would not be conducive to happy co-operation. In any case, neither of you had recourse to arbitration.

MR. O'DONNELL: That is true. My whole thought was that Mr. Spence's remarks were rather general, and I would not for a moment assume that because we had a dispute submitted to an arbitral tribunal with respect to any particular project, that that would affect other projects, and that they would not be dealt with on their merits in their own turn. That is all I was pointing out.

THE CHAIRMAN: I know; ^{but} we do not know what would happen. You have not the experience of it.

MR. O'DONNELL: That is correct; but the Act allows it in any time we so choose to use it.

THE CHAIRMAN: It is all speculation. We can draw our own conclusions.

MR. O'DONNELL: Yes.

MR. SPENCE: Yes. It might be that we would be able to carry on in the atmosphere of co-operation

in relation to the other projects that were under consideration, but on the other hand it might be human nature to have a little jockeying for position in the expectation that once the arbitration was invoked in one case, it might be invoked in several others.

THE CHAIRMAN: I would take this to be the case, ^{that} the intention of the Act is not that each company should see how it can get ahead of the other.

MR. SPENCE: No.

THE CHAIRMAN: Or to make some proposal which would benefit it and not benefit the other. That is not the intention of the Act?

MR. SPENCE: No.

THE CHAIRMAN: The intention of the Act is that there should be co-operation which would be helpful to the public, ^{and} to shippers, without unduly hurting the other company.

MR. SPENCE: Yes. We have tried to carry on these negotiations in a spirit of co-operation, not a spirit ^{of one} trying to get ahead of the other.

THE CHAIRMAN: That would be the intention.

MR. SPENCE: We hope that that object and that spirit will continue, ^{and} that the two companies will examine together the possibilities of the various proposals,

with the intention of putting into effect those that will be of mutual advantage and of equal benefit to both.

That is very different from the attitude --

THE CHAIRMAN: And of course of some benefit to the public.

MR. SPENCE: Yes, my lord; but of course the object of the Act was to achieve savings by co-operative measures which naturally react to the benefit of the public if they can be made.

MR. O'DONNELL: The only thought I had in mind in interjecting what I did was that I would not want it to be thought, because we might see fit to ask for an arbitral tribunal with respect to any particular project, that we would not be willing to sit down and discuss other possible projects with an open mind and with a view to arriving at what was fair in the circumstances; that it did not necessarily mean, because we saw fit to invoke the establishment of the tribunal in the one case, there was an end to all endeavour to save money on other projects which on their own respective merits were worth going ahead with.

THE CHAIRMAN: Not necessarily; but if you did invoke it, that would mean in order to compel the other railway to co-operate.

MR. O'DONNELL: It would mean simply submitting the facts to a tribunal, and they would decide.

THE CHAIRMAN: With the expectation that they would find in your favour.

MR. O'DONNELL: We would hope so, yes. We might be thrown out and lose our case.

THE CHAIRMAN: Well, it is all speculative, because the Act has never been invoked.

MR. O'DONNELL: Since 1933.

THE CHAIRMAN: You have never on any single occasion invoked such a tribunal.

MR. O'DONNELL: No, because I assume these things have been considered, and when the other side's view has been put forward and reviewed it has been felt that possibly there was not enough in it to make it worth while fighting about; but the Act is still there, and in a case where it might be advisable to try to have a project put into effect, whether it be one of our friend's submissions or one of ours, the Act is there and can be used, and the fact that it was invoked, either by them or by us, would not necessarily mean that there could be no further co-operation.

COMMISSIONER ANGUS: It does not follow that both railways have identical attitudes towards the Act.

MR. O'DONNELL: That is right.

COMMISSIONER ANGUS: One may have the position Mr. O'Donnell is stating, and the other the position Mr. Spence is stating.

MR. O'DONNELL: That is right. I just want to make our view clear, that if we happen to get into a dispute about one project, that does not necessarily mean that we would not co-operate upon others.

THE CHAIRMAN: You do not know until the time comes.

MR. O'DONNELL: That is true, my lord.

COMMISSIONER INNIS: On the whole, the Canadian National has an infinite capacity for objectivity.

MR. O'DONNELL: Yes, we hope.

MR. SPENCE: In any event, in answer to Dr. Angus' question, if one of the companies, fearing that it might damage the co-operative spirit if an arbitral tribunal was invoked, and being properly convinced of

this, refrained from invoking the tribunal, I submit that that company would still be in the position of the innocent party and should not be made to suffer by being deprived of a rate increase because it held those views.

COMMISSIONER ANGUS: The argument is that the shipper might be made to suffer because of your reluctance to make use of machinery provided by Parliament. After all, in a sense, if the economies are not made, and the requirements of the railways are submitted without those economies, under present conditions -- perhaps not under those of the nineteen thirties, but under present conditions -- it is the shipper who pays, isn't it?

MR. SPENCE: Well, Dr. Angus, our feeling is that we can benefit the shippers more by refraining from using this arbitral tribunal, because we can carry on in a more co-operative spirit and get farther without the tribunal than we could with the tribunal.

COMMISSIONER ANGUS: And you are prepared to show that the extent of the co-operation substantiates that view?

MR. SPENCE: Yes, I think so.

MR. FRAWLEY: My lord, I would not want Mr. O'Donnell to leave the impression with the Commission that the failure to invoke the tribunal was an accident at all, because Mr. Armstrong made it very clear at page 20971 yesterday, saying:

"It also provides for an arbitral tribunal which may be invoked by either railway to arbitrate between them in connection with any co-operative project in regard to which they are unable to reach accord. Such arbitration would seem to go beyond simple co-operation, in that either railway is perhaps placed in a

position to force upon the other a so-called co-operative project which is not acceptable to that other railway. The invocation of arbitral tribunal would seem to be the antithesis of co-operation, and might be expected to have an unfortunate effect upon the joint co-operative effort. Perhaps for this reason the management of neither railway has invoked such a tribunal."

So it has been a policy.

MR. O'DONNELL: That is Mr. Armstrong's view, and Mr. Armstrong is quite free to express his view. I am simply saying that, notwithstanding that, when you came to a point where any project were to be considered of sufficient importance for the Canadian National Railways to endeavour to have it prevail, then we would undoubtedly invoke the tribunal, and we would assume that in so doing that would not mean that other projects which could be considered in a fair way would not be dealt with accordingly. In so far as rate increases are concerned, so long as the body to which these co-operative projects are reported upon is Parliament and not the Board of Transport Commissioners, there is no reason for mixing the two matters together; they are different as far as I am concerned.

COMMISSIONER ANGUS: Mr. Spence, does what you have just said go so far as to amount to suggesting that Part III of the Act, the Canadian National-Canadian Pacific Act, is at best useless, and perhaps harmful?

MR. SPENCE: No, Dr. Angus, I do not mean to say that at all, because we feel that the existence of those sections in Part III has had a beneficial effect in keeping the positions of the two companies moderate;

and, if I may join with that question a question that his lordship asked yesterday as to whether any recommendation had been made for the repeal of the whole Act, or at least that part of the Act relating to co-operation, our position is that the Act should remain as it is. We feel that even if the Act served no other purpose than to stand as a warning or admonition to the two companies that they are not to indulge in wasteful and destructive competition, then, even if it did nothing else but that, it would be fully justified. We also feel that, even though the tribunal has never been invoked, the very fact that those sections exist has served to keep most railways within moderate and reasonable bounds in their negotiations on co-operative measures, because each company knows that if it does not act properly and reasonably it may cause the other company to call for a tribunal, and that is a subject that I will perhaps develop a bit more in argument in a week or two. However, that in general --

COMMISSIONER ANGUS: But you have said that Part III sets up machinery which could not in practice be invoked without destroying the co-operative spirit that is necessary for the fulfilment of the purposes of the Act.

MR. SPENCE: Yes. If, for instance, the Canadian Pacific took such an arbitrary and unreasonable view that the other company was quite justified in saying, "Well, we are going to put this whole thing before a tribunal," by that time, of course, co-operation would be pretty well at an end anyway; but the fact that there is that possibility, that if we took an unreasonable view the whole thing would be shown up before the tribunal, is inclined to keep us from taking such an

unreasonable view and compelling us in a way or causing us to be more co-operative; and the same thing, of course, with the other company.

MR. O'DONNELL: I hate to interrupt, but I think possibly this is the easiest way to do it, as we go along, because, with twenty-five thousand pages of matter in the record, we may forget when the time comes to say something about it. I think I made our view clear, that if there be a project that is sufficiently important to warrant setting up a tribunal, we will ask to have it set up, and we would assume that that would in no way interfere with other projects that might be considered in a co-operative way. Now, that is clearly our view, and, while we have never had to do it, and the projects which have been considered, the list of which is in the record now, have been dealt with through discussion and settlement without actually going to court, the day might come when we might want to go to court, and we want it clearly understood that we feel quite free so to do, and our friends likewise; and that would not prejudice, in our view, what other projects might arise that could be discussed in a co-operative way.

THE CHAIRMAN: Well, I think the thing to be borne in mind by both companies is that the point of departure in this Act is a direction to you both to attempt to co-operate.

MR. O'DONNELL: That is right.

THE CHAIRMAN: Now, that is a statutory direction by which you are compelled -- not only compelled, but compellable -- to comply with it under proper procedure.

MR. O'DONNELL: That is right.

THE CHAIRMAN: That is the beginning of it. You are directed to attempt to co-operate. That is the very language of the Act.

MR. O'DONNELL: That is right.

THE CHAIRMAN: You are directed to attempt forthwith to agree, and continuously to endeavour to agree, and so on. As you know, disobedience to a statute --

MR. O'DONNELL: Has sanctions.

THE CHAIRMAN: It is mentioned in the Criminal Code, among other places. So that obligation is one which hangs over both companies continuously.

MR. O'DONNELL: Yes; and both companies have the power under the machinery set up by the Act to submit the dispute to a tribunal for its judgment and have the tribunal give a judgment which is enforceable under Section 22 -- force and effect:

"An order or decision of any tribunal shall be binding upon the National Company and the Pacific Company, and shall have like force and effect as an order of the Board of Railway Commissioners for Canada made in a matter falling within the Board's jurisdiction, and may be enforced as if it were an order of said Board, and all the provisions of the Railway Act in respect of orders of the Board and their enforcement shall apply mutatis mutandis to an order or decision of the Tribunal."

So there is sanction there, and we will use it if we ever have to use it. We want our position clearly understood.

THE CHAIRMAN: If you are both put in the position of having to confess, you confess your

virtues immediately; is that so?

MR. SPENCE: Well, I take it from what Mr. O'Donnell has just said that we are both agreed, then, that the sections in Part III as to ^{the} arbitral tribunal should remain, although perhaps we have different reasons for saying so; we are agreed on that question.

COMMISSIONER ANGUS: I can see from what Mr. O'Donnell has said that it is the view of the Canadian National that Part III is a very live section of the Act, which might be invoked tomorrow and might serve a very useful purpose; but I gather that the view of the Canadian Pacific is that it could only be invoked at a very great cost -- that of imperilling the spirit of free co-operation between the two enterprises. Now, if that is the view of the Canadian Pacific, does it not seem to follow from that that some better wording of Part III, some alteration of Part III, might retain its virtue as a warning, which is the only virtue claimed for it, without depriving it of its convenience as setting up a way of arriving at effective economies?

MR. SPENCE: Well, I do not know just what change you have in mind, Dr. Angus, in Part III. As far as the Canadian Pacific is concerned, it does feel, as you said, that there would be a considerable sacrifice in invoking Part III. At the same time, we think that it has a beneficial effect as it stands, and that it should not be altered. We find no objection to Part III as it is on the statutes at present.

COMMISSIONER INNIS: Because it compels both of you to be sweet-tempered.

MR. SPENCE: I think that is putting it in a nutshell, Dr. Innis.

THE CHAIRMAN: Well, I wish all counsel

concerned would give very careful attention to a reading and a study of the interpretation of the word "dispute", which is contained in the Act and which governs Part III, because these tribunals are to be set up in the case of a dispute. I glanced at it yesterday, but was not able to read it thoroughly. I think later on I shall have to ask you again what you have to say about the meaning of that interpretation.

MR. SPENCE: Yes, my lord. I think perhaps --

THE CHAIRMAN: The language in which it is couched is rather involved, and if there is no dispute there is no tribunal.

MR. SPENCE: I think that perhaps I may have to answer that more fully --

THE CHAIRMAN: You have apparently never had occasion to examine it, because you have never at any time invoked any such tribunal, or I suppose have never felt compelled to.

MR. SPENCE: I think a dispute would only come about in the joint executive committee.

THE CHAIRMAN: This is not the time to discuss it. Some time later on we may come back to it, and I would like you all to give your best study to that very question. When does a dispute arise? What is a dispute? -- because until there is such a thing as defined by the Act there is no call for any tribunal.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: You had better go on with Mr. Armstrong, I think.

MR. SPENCE: I said there were two answers to Dr. Angus' question. The second answer that I had in mind was this, and perhaps I said something about it yesterday, although I did not complete this. The

invocation of the tribunal would be in itself a fairly extended process.

COMMISSIONER INNIS: Would be in itself?

MR. SPENCE: A fairly extended process. I do not mean that it would be unduly cumbersome, or so cumbersome as to cause the railways to avoid invoking the tribunal, because the appointment of the arbitrators can come about simply and easily and there is no complicated legal process to be followed. However, it is undoubtedly true that it would take a considerable time for a case to be placed in full before the tribunal and a decision reached, and it can readily be imagined that if at any time the situation arose in which the railways needed a rate increase, and ^{there} were four or five or six of these cases pending before the tribunal, the most unreasonable delay would be imposed upon the railways before they could get their rate application heard.

COMMISSIONER ANGUS: If you are replying to my question there, I assume that the mere fact of having referred a case to a tribunal would show that a railway was actively pursuing economies. It would not follow that it was necessary to wait for the finding of the tribunal.

MR. SPENCE: Well, possibly not, Dr. Angus, but one can perhaps imagine that the opponents of the rate increase would say, "Well, there are possibilities of economies that may come out of these findings of the tribunal, and therefore there should not be any decision on the rate increase until those findings are completed."

THE CHAIRMAN: Until the tribunal has said, "Yes, this will produce economy."

COMMISSIONER ANGUS: Yes, but have not all these findings of the Board, or at any rate the recent ones,

said they will keep the situation under review and they will see what the earnings are, see what happens? Would not the finding of the tribunal simply merge into that situation quite easily?

MR. SPENCE: Well, perhaps so, Dr. Angus. On the other hand, if it were made a prerequisite of a rate increase that it be proved that all possible economies had been made, then the rate increase could not be granted until it had been determined what the economies were -- at least, that I am sure would be argued against us.

COMMISSIONER ANGUS: I can see the point of that argument, but it seemed to me the argument in your brief was something rather different, that the innocent might be punished with the guilty, and my suggestion was, the innocent have not completely demonstrated their innocence until they have made their reference to the tribunal; at that point it is demonstrated; you need not wait for the finding.

MR. SPENCE: Yes, I understand what you mean.

COMMISSIONER ANGUS: Another point on both your references is really this, that I have not as yet certainly considered any improvements in Part III, any specific improvements. I thought perhaps the two railway companies, which had this tool put at their disposal but for the reasons that have been given by you and Mr. O'Donnell have never used it, might be in a position to say, "If it were slightly different or if it were considerably different we could use it advantageously," and I wondered if thought had really been given to that point.

MR. SPENCE: So far as I know we have not studied any possibilities of changes in Part III, for the reason that we were satisfied with it the way it stood.

MR. O'DONNELL: We agree. As far as we are concerned, we think Part III is there and it is in its proper form, it provides a remedy which would be most useful in any given circumstances where it should be invoked, and it has not been invoked/heretofore for reasons which are in our view sufficient does not warrant changing it.

I would just say this, if I might, that so long as Parliament is the body to which reports concerning co-operation have to be made, there is no reason for confusing the two matters, co-operation under the C.N.-C.P. Act and rate increases under the Railway Act. Rate increases under the Railway Act are dealt with by the Board of Transport Commissioners and under the law as it stands their decisions cannot be impeded or delayed through questions relating to co-operation under the C.N.-C.P. Act, because Parliament has reserved to itself the right to review those measures, and they have nothing to do with rate increases under the Railway Act. So the situation is safe so long as the Acts remain as they are. We are to report to Parliament concerning co-operation, and we go to the Board of Transport Commissioners for rate changes either up or down.

MR. FRAWLEY: Of course, that was not our position at all, my lord, before the Board of Transport Commissioners. I won't repeat it; Mr. MacPherson stated it yesterday. We simply appeal to what we call the inherent jurisdiction of the Board of Transport Commissioners to say, "Here is a place where you have not saved enough money." There is no question of confusing the two statutes, of course. The Board of Transport Commissioners were given very little

jurisdiction, practically none, over the efforts of these railways to co-operate, but they still always could say, "He who seeks equity must do equity." You must come in here and show that you have saved all the money that might have been saved under this statute. That is all we said. Perhaps the Board did not quite appreciate our point of view.

THE CHAIRMAN: Did you point out instances within your knowledge where the railways might have saved something and failed to do so?

MR. FRAWLEY: No, we did not go that far, sir.

THE CHAIRMAN: How else are you going to show anything?

MR. FRAWLEY: We put the onus on the railways.

THE CHAIRMAN: How can they decide any such onus? How can they show positively that they have done all that could humanly be done?

MR. FRAWLEY: There could have been some attempt, sir, to meet the position we put before the Board; there was not.

THE CHAIRMAN: Well, what attempt?

MR. FRAWLEY: They might have put somebody in the box to indicate, such as Mr. Armstrong, what they have done; they might have filed with the Board some such information as this, because there are now pages and pages of what they have tried to do and what their efforts have been, more or less successful; but they did nothing, sir.

MR. O'DONNELL: It is merely a question of law, that is all. There was no question of onus. My friend says they put the onus on us. It gets to a matter of law. These matters are reported to Parliament, not to the Board of Transport Commissioners. That was

the argument that was put to the Board. The Board accepted it.

THE CHAIRMAN: It seems to me the sensible and the only useful procedure would be for those who think that the railways have not co-operated in some particular -- each province knows -- the Prime Ministers of the provinces did complain in their request for this Commission that the railways had not sufficiently carried out this co-operative statute, so we would like to know -- tell us where -- give us an idea of where within Alberta or within Saskatchewan or within Nova Scotia they might reasonably have co-operated and failed to do so. It seems to me that is the only useful procedure to adopt. If they come and say, "Here is what we have done, and we assert that is all we could do," then does it all stop there, Mr. Frawley?

MR. FRAWLEY: Oh, no, sir. Before this Commission I propose to develop some things in Alberta that perhaps might have been done. But before the Board, sir, it was all lost in the question of whether the Board had any jurisdiction in the matter, and they kept talking about the limited jurisdiction. The Chairman of the Board is just a persona designata to serve as a chairman of these arbitral tribunals and that is as far as we ever got in our discussions before the Board, sir, and I say, with great respect, that our point was lost. Our point was that there was an onus on these railways to show by way of amelioration of their expenses that they had done all they could.

THE CHAIRMAN: What do you mean when you say that they had done all? That they had done something --

MR. FRAWLEY: We did not hear anything about it at all, sir.

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MR. SPENCE: Naturally, the first thing --

THE CHAIRMAN: Who is going to say that that was all they could have done?

MR. FRAWLEY: There was some cross-examination of the witnesses as to whether or not there was anything pending at the moment under the statute. No, we were told there was nothing pending under the statute. Your lordship must understand that we were in an impossible position. We did not know anything about the operation of this statute, what had been going on in Montreal or elsewhere. We hardly know in our own provinces what schemes were undertaken. The account of their stewardship, as you might call it, that now appears in the submission of the two railways is the first that we ever had of that sort of thing at all.

MR. O'DONNELL: The whole point is that there is no account of stewardship to be given to the Board of Transport Commissioners concerning these matters. It is a matter of law. That matter was submitted to the Board of Transport Commissioners, and the Board ruled on it in the 21% case. It said there was no use going into these matters, they had no jurisdiction, and they were matters that could not be discussed.

THE CHAIRMAN: What is your attitude now, Mr. Frawley? The Board apparently held that you had no jurisdiction; what is your attitude now? That there should be a change made, and that the Board should be required hereafter to --

MR. FRAWLEY: Personally, my lord, I adopt the suggestion of the Canadian Federation of Agriculture, that there should be some continuing supervision of the statute, that it should not be left to --

THE CHAIRMAN: By whom? There is supervision

by Parliament, apparently, we are told. You say there should be supervision by the Board?

MR. FRAWLEY: I read yesterday to the Commission what the Canadian Federation of Agriculture had suggested, and that was the appointment of a continuing tribunal that would be given authority, a special tribunal to be set up to be given authority so that there could be some third party, there could be some public interest superimposed upon the operations of the two railways in this matter. That is all, sir. That is the concept, I think, of the --

THE CHAIRMAN: I know, but what would you have? Would you have a third party travel around the country and find a locality where something should be eliminated, or an approach to the railways to deal with the situation, and then impose it on them?

MR. FRAWLEY: It is something very close to that. I will just read what the recommendation is. This is the recommendation of the Canadian Federation of Agriculture: this continuing tribunal, the Federation says

"would be given authority to undertake research and investigate all possible ways to reduce deuplication of services and wasteful competitive practices; such tribunal to propose from time to time to the railway companies such measures the findings of their research show would be fruitful in effecting economies; and that the tribunal report each year to Parliament recommendations which they have made and the extent to which these have been adopted and carried out by the railways."

In my respectful submission, that would be a step forward; it would be something more than it is at the moment, where it is left entirely to the railways.

THE CHAIRMAN: It strikes me offhand that that would be a rather expensive body to set up. I don't know; I am not sure of that. Might it not be a branch of the Board itself?

MR. FRAWLEY: It might be. I think there was some discussion -- I do not recall too clearly -- I think Dr. Hope was examined about that, and I do not know whether he held to a tribunal other than as apart from the Board of Transport Commissioners, or whether he was willing that these functions should be discharged by the Board. Personally, I would think that in the kind of Board that we think will emerge from the operations of this Commission, they might be entrusted with this.

THE CHAIRMAN: Then I want to go the full length and see how far it does go. Is it, then, the intention that the orders of this body are enforceable against the railways?

MR. FRAWLEY: Well, that is a crucial question, and I do not think Dr. Hope went that far. I think he simply said that they should have the right to propose to the railways. And surely, if the tribunal was there, commissioned by Parliament to do these very things, surely it would almost automatically have much more than a merely moral effect upon the railways to undertake these things and carry them out. I mean, my lord, if this tribunal reported year after year for two or three years that they had proposed certain measures to the railways and they had not been carried out, then probably further restrictions and powers would be given to this tribunal. I think it

is the Federations' thought that it might commence in this way and perhaps become stronger afterwards.

THE CHAIRMAN: You see, it would have to be a very well informed tribunal, to go throughout Canada and say, "Here, now, you ought to do this and that."

MR. FRAWLEY: That is right, sir; and I think that this Commission --

THE CHAIRMAN: It seems to me it would require competent people ready to make very thorough research.

MR. FRAWLEY: Oh, yes. I recall Dr. Hope saying that.

THE CHAIRMAN: To find out what the bearing of what they do in one locality would have on another locality.

MR. FRAWLEY: I think there would have to be engineers and so on attached to that kind of tribunal. He says, to undertake research and investigate all possible ways. I think that is --

COMMISSIONER ANGUS: Mr. O'Donnell, if I might refer to something you said about the relationship between the two Acts, it says the Chief Commissioner of the Board of Railway Commissioners, which I suppose would be the Chairman of the Board of Transport Commissioners, is to be the presiding officer of all tribunals, so that if there were tribunals the Chairman of the Board at least would be implicated in this. Now, is this true, that when this Act was passed, which was 1943, the immediate problem was to reduce what was called the Canadian National Railway's deficit and perhaps to help the earnings of the Canadian Pacific Railway during the depression, and that the shippers as a class would rather lose by co-operative measures than gain by them -- that is to say, they would be getting rather less service for the same money -- and if a new situation has arisen after

the war, in which the shippers' interest is reversed so that their interest is in seeing that measures of co-operation go as far as possible in order to make the demand for higher freight rates as slight as possible, some modification of the Act might be reasonable to take account of that change in position of the shipper?

(Page 21020 follows)

MR. O'DONNELL: All I would say to that, Dr. Angus, is that it was not merely to lower the deficit for the time being but it was to stop what had been rather reckless competition on the part of the two railways. That is reflected in my submission in section 17 (3) (c) which reads as follows:

"control and prohibition in respect of the construction of new lines and provision of facilities and additional services where no essential need of the public is involved, or where the result would be in the main the division of traffic already adequately provided for;"

That was another feature of the thing.

THE CHAIRMAN: THAT is very near to controlling the deficit.

MR. O'DONNELL: That is quite true. But it was to restrict that. Parliament under the Act as it now stands says "You will report concerning these matters to us." That was the reason why the Board of Transport Commissioners said that this particular Act was no part of their police jurisdiction, so to speak. You will find, Dr. Angus and members of the Commission, in the 21% case at page 40, the paragraph which deals with that. The objections that my friend Mr. Frawley is putting forward here or the arguments have been heard on four occasions by the Board and by the Governor in Council. The Board disposed of them in three paragraphs at page 40 in the 21% case. If the Commission thinks it might be convenient to have them put on record, I shall be glad to read them.

THE CHAIRMAN: Read them.

MR. O'DONNELL: I shall do so, my lord. They are as follows:

"The respondents advanced the argument that because of the provisions of The Canadian National-Canadian Pacific Act 1933 (Can. Chap. 33 of 1933) the Canadian National Railways and Canadian Pacific Railway Company should be required to show that they had, as between themselves, carried out all co-operative measures, plans and arrangements possible to effect economies and produce more remunerative operation, as directed by the said Act, before any increase in freight rate is allowed.

The Canadian National-Canadian Pacific Act does not confer upon the Board any duty or authority to require the railway to study and undertake co-operative measures with a view to effecting economies, or to review and investigate what measures they have taken, or might have taken under such Act.

As indicated during the hearing this is not a matter which would seem to invite special inquiry on our part. Nothing can, therefore, be gained by entering upon any extended discussion of the subject at this time."

That is one of the matters which was referred to the Governor in Council on the appeal which was made from the 21 $\frac{1}{2}$ judgment and the Governor in Council, as the Commission will recall, . . . instructed ^{them} to review all these matters which were complained of. The matter was dealt with at a latter hearing of the Board of Transport Commissioners.

THE CHAIRMAN: You say the Governor in Council were instructed to review?

MR. O'DONNELL: The Governor in Council instructed the Board to review these matters or referred them to the .

They were reviewed by the Board.
In the review judgment, that is the 8th judgment as it has been called, the judgment rendered on September 20, 1949, the matter is dealt with at page 4 by Judge Archibald, then chief commissioner. He says in part as follows:

"Dealing first with reference to the Board by order in council p.c. 4678, in my opinion no new evidence was furnished to the Board or new matters drawn to its attention which would justify disturbing the findings of the Board with respect to the following matters...

(e) co-operation pursuant to Canadian Pacific-Canadian National Act."

MR. FRAWLEY: Would you turn to page 11 and read what was said in the second part of the judgment?

MR. O'DONNELL: I will read the whole matter, if you wish.

COMMISSIONER ANGUS: That finding by the Board is simply that the Act does not confer certain powers.

MR. O'DONNELL: THAT is right.

THE CHAIRMAN: All we are considering is whether it would be desirable that the Act should be amended so as to confer such powers on them or somebody else.

MR. O'DONNELL: That is right.

THE CHAIRMAN: There is nothing in what they said dealing with that question.

MR. O'DONNELL: That is true. I was merely putting on record the way in which they dealt, on three occasions with these various arguments. Then there is page 11 as Mr. Frawley points out, in that judgment and then ⁱⁿ that review judgment that was rendered on February 28, 1950, the matter is dealt with on page 8. I will not take the time of the Commission to read the rest of it.

MR. SHEPARD: Mr. Chairman, it occurred to me it might be appropriate for me to read at this time one of the amendments Manitoba has suggested. It is a sub-section

to sections 325 A; it is already on record. It is sub-section 3 (c) and I think I might just read it. It reads as follows:

"The Board in determining any application under this section shall have due regard to --

And the section as we have drafted it has to do with the determining of any general freight rate application.

"-- (c) Whether or not the railway is operated ^{and} efficiently with due regard to any savings which have been, or should have been, effected included savings under the C.N. - C.P. Act."

I think that amendment would overcome the lack of jurisdiction that the Board at present feels it has to take into account savings that might have been effected under the Act. While I am on my feet I might say a word as to Manitoba's attitude on this matter. You indicated a few minutes ago ^{Mr. Chairman,} that you considered that the provinces should be prepared to bring out certain points as to where economies could be effected in their own provinces.

THE CHAIRMAN: If they know of any.

MR. SHEPARD; So far as Manitoba is concerned, I think I should like to say just this. There are none that we can point to definitely in Manitoba, but that we consider that possible economies in the operation of such a complex thing as a railway are matters which are essentially and peculiarly within the knowledge of the railways themselves. Our suggestion would be that we are perhaps not competent as a province to say; 'Now, if you do so and so, you will save so much money.' That is something really that the railways have to calculate and determine themselves. As far as ^{primary} public interest is concerned, we would go one step further and say that if this section as we have suggested it is incorporated into the railway Act, we would envisage that the Board of Transport

Commissioners, as reconstituted, would then be in a position to have some one person or group ^{of persons} on their staff who could say to the railways, "We think that perhaps you should study such and such a matter and we would like you to make a study and give it to us. We will analyze it, and if we consider that economies could be effected in that way, that matter will be taken into account when there is a rate case." In other words, the Board would not order the railways to effect any economy but they would have available to them the results of the studies which would show that economies could be effected. Then when the railways come in pleading financial need on a rate case, the Board would have reference to the studies and would say, "Your need would not have been as great if you had given effect to the suggestion we made about such and such a matter, and therefore we will reduce the amount awarded by way of a general increase, let us say, by the amount that you should have saved." That, broadly speaking, is Manitoba's attitude on the matter.

MR. SMITH: If I may be permitted to say a few words, I should like to say that I quite agree with everything that Mr. Shepard has said. I should like to refer the Commission to what I said in volume 72 in referring to the American practice with respect to this matter. I said in that case, my lord --

MR. O'DONNELL: What is the page?

MR. SMITH: Just a minute and I will give Mr. O'Donnell the page. It was in answer to a question which Dr. Innis put to me on page 14718 of volume 72. I had been speaking about the submissions in my brief with respect to co-operation and Dr. Innis put this question to me:

"COMMISSIONER INNIS: I would like to ask you one or two questions, Mr. Smith.

You do not think that the Canadian Pacific-Canadian National Act reflects too closely the problems of the depression, and perhaps, is completely out of focus at the present time?

MR. SMITH: No. I think, Dr. Innis, it was due perhaps to the conditions at that time, but what I do suggest is this: we do not know; we have not available information as to whether or not there has been any attempt made by the railways to comply with the provisions of that Act. That is information which is peculiarly within the counsel of the railways... You will find an ^{analogous} situation in the United States and the point has been taken --

There is some error in the transcript here. Then I continue:

" We said it was a condition precedent that the railways in a rate case -- "

I am referring now to the 21% case.

" -- should establish that they had done everything; that they were efficient, and that they had done everything to eliminate waste.

Perhaps that was too extreme a position. But I find that the same position was taken by various bodies in the States, governmental bodies in that case, under the analogous legislation in the United States,..."

The analogous legislation is now contained in section 15A of the Interstate Commerce Act but is not nearly as wide or as comprehensive as the provisions of the Canadian National-Canadian Pacific Act. I continue:

"-- which provides for co-ordination and elimination...

But the argument was made in these revenue cases --"

That is, the American cases.

"-- that it was a prerequisite that the railways should establish that point... In

the last case Ex Parte 168, the I.C.C. refused the motion of the Secretary of Agriculture of the United States to institute an investigation as to the efficiency of the management of the railroads."

The matter was discussed in Ex Parte 168, in volume 272, I.C.C., page 695 at page 705.

THE CHAIRMAN: What volume did you say? Was that volume 262?

MR. SMITH: Volume 272.

THE CHAIRMAN: Of what?

MR. SMITH: I.C.C., page 695, at page 705.

The treatment which was given to that motion was this. The Commissioners in their report stated that under the legislation revenue cases were to have priority over any other case and therefore in the limited time at the disposal of the commission on a revenue case, it would not be fair to the railways to have to have a prolonged investigation into these matters. But I do suggest, sir, that it was recognized that it was incumbent upon the railways to plan to eliminate waste and of course we have the same statutory obligation under this Act; because the obligation is imposed upon the railway companies for the purpose of effecting economies and providing for more remunerative operation. ~~to attempt~~ to agree and continuously and to endeavour to agree upon such co-operation measures, plans and arrangements as are fair and reasonable under the circumstances. That is section 16 (1).

I submit, my lord, that there is a statutory obligation imposed by Parliament upon the railways and that cannot be

lightly treated. I think it is recognized in the cases to which I referred that there is a similar obligation upon the railways and therefore it is a matter for investigation. The Commission decided it could not be decided upon in a revenue case, ^{and that} there should be continuous investigation by the Commission into into all these matters, and as a matter of fact over the period since 1933 when they had a co-ordinator, he made numerous reports on the measures which could be adopted to eliminate waste and to promote efficiency.

THE CHAIRMAN: Who made those?

MR. SMITH: The co-ordinator under the 1933 statutes in the United States. I am speaking of the United States.

THE CHAIRMAN: Oh, in the States?

MR. SMITH: Yes. But I suggest that a study of that case would be helpful to the Commission because I suggest that it is manifest that the statutory obligation is upon the railways to show that they have complied with the provisions of the Act; and I do submit that the statutory obligation imposed by section 16 (1) is an obligation which remains as ^{ever} present. I think that ^{it} can not be overlooked. I suggest there should be somebody that is empowered to make these investigations. I do not think that the Railway Committee which considers these matters I suppose every year ^{can} do so. They only have to receive a report from one railway. There is no obligation upon the Canadian Pacific railway to make any report. There is an obligation upon the Canadian National to make a report. But I suggest that there should be some authority imposed by statute, as is suggested by Mr. Shepard, ^{so} that this question of whether or not there has been any compliance with the Act may be inquired into, and that it should be a continuous study.

COMMISSIONER INNIS: Have you made any study of the position of the federal co-ordinator?

MR. SMITH: I beg your pardon, sir?

COMMISSIONER INNIS: You have made no study of the position of the federal co-ordinator in the United States?

MR. SMITH: The matter is discussed at great length in Bigham. Have you a copy of that here, Mr. Covert?

MR. COVERT: No, I have not it here.

MR. SMITH: I am sorry, my lord, I have not that here.

COMMISSIONER INNIS: I wondered whether you had something of that kind in mind for the Canadian situation.

MR. SMITH: There is a chapter on co-operation in Bigham's book.

MR. MacPHERSON: I think, my lord, that the reason that this is before the Commission at the present time is important. The question was raised before the Board of Transport on the various cases, as Mr. O'Donnell has said. It was raised by the provinces, and may I say raised immediately objection ^{was} taken by the railways that it was not a matter that could be considered by the Board of Transport at all. The position that the provinces took was this: Here is a statute of Canada, the C.N.-C.P. Act, which requires these committees to function and to function continuously to effect economies. What has been accomplished? The railways objected to that. They said that the Board of Transport had no jurisdiction to deal with it. When we inquired of the railway witnesses as to what now was being done, what continuing work was being done, objection was taken to that line of examination. The Board of Transport may have been right in their position. I am not arguing now that they were right or

wrong in saying that they could not go into that ^{matter.} But I am saying, ~~and~~ the provinces said before the Board, that unless the C.N.-C.P. Act is to be regarded as a dead letter, then there should be some method or means of some tribunal dealing with the question as to what is being accomplished under that Act. I do not want to see too many tribunals --

THE CHAIRMAN: You say "dealing with what has been accomplished under the Act"

MR. MacPHERSON: Under the C.N.-C.P. Act.

THE CHAIRMAN: That is what we are dealing with.

MR. MacPHERSON: That is what we are dealing with.

THE CHAIRMAN: Do you not mean more than that?

MR. MacPHERSON: That is how it comes before us. We could not get it before the Board of Transport Commissioners at all. I am not anxious to see any more tribunals established, even as suggested here by the Federation of Agriculture; but I think that the amendment that Mr. Shepard suggests to the Tailway Act will achieve what we have in mind, because then the Board of Transport when being asked because of need to increase the rates for the railways, can go into the question as to what savings has been made and whether they are savings that are reasonable having regard to all the circumstances. We have before us references to the Duff Commission.

THE CHAIRMAN: What is that?

MR. MacPHERSON: The Duff Commission, ^{what} the Duff Commission back in 1932 ~~had to say~~ relative to the necessity for co-operation. Before the Duff Commission and before the Committee of the House fantastic statements were made as to the savings that could be effected. We could not find out what savings had been effected. I think the C.N. submission which I have not before me -- I have

the C.P. submission here - it would indicate that the savings amount to about \$1 million annually or a little bit in excess of \$1 million annually. I am merely indicating why the matter is before this Commission now, how it came to be here and the position of the province before the Board of Transport from time to time and the position of the railways. While I am not complaining at the moment as to the decision of the Board of Transport or say^{ing} whether it was right or wrong, I am saying that if they were right, then there should be such an amendment as Mr. Shepard suggests so that they may go into it.

THE CHAIRMAN: The position seems to be this. Here is an Act and these two railways come forward and they say, "Here is what we have done about the Act. Here it is." So far as I can find out at the present time, nobody rises and says, "but they should have done something here or there, and they failed to do it." Are we to remain that way for the present? Is no one now to suggest, with the full knowledge that you gentlemen have, each one in his own province, something that should have been done? Is nobody in a position to say, "something might have been done in Ontario, in Quebec or in Nova Scotia which would help us greatly if we had that"? That was alleged by the premiers.

MR. MacPHERSON: That is right.

THE CHAIRMAN: They alleged that the railways had failed. They must have known what they were talking about.

MR. MacPHERSON: What was alleged by the premiers was this. The premiers took what they had in this Duff Report, paragraphs 210 and 211 particularly, and they said, "We have sought to ascertain from the railways what the railways have accomplished under this Act and we have been unable to find out anything about it. We do not know."

We are not in the railway business. We are not experts in railway operation. But we think that this is something, when applications are made for freight rate increases, that should be given to us or this is information that should be given to us and be given to the Board of Transport and be given to the public, at a time when the applications are being made." That was the position the premiers took. As to the province of Saskatchewan, I do not know of any particular instance of anything, but I notice one in the list that I should like to ask some questions of Mr. Armstrong about. It is not in the Province of Saskatchewan but it does concern the Province of Saskatchewan. I am speaking now of the Fort William-Port Arthur terminal that was apparently discussed, and ^{the} savings that might be effected there, and how and why. That does concern us, particularly in two seasons of the year, in the fall and in the spring. This is information that we now have for the first time. We tried to get that information before the Board of Transport. We got none. We have some information now. But

in the light of the figures that were used by the railway officials and others before the Duff Commission and before the Parliamentary Committee, whether a saving of \$1 million a year is all that can be accomplished by the railways is, I think, a matter that is of great importance in any application being made for freight rate increases.

THE CHAIRMAN: At this moment we have to break off.

-- AFTER RECESS:

THE CHAIRMAN: I think you were addressing us, Mr. MacPherson. Had you finished?

MR. MacPHERSON: I had finished, my lord.

MR. SPENCE: There a number of things I would like to say about what has been said this morning, but I think it might be more appropriate to bring that in in argument, than at the present time.

THE CHAIRMAN: Yes, as long as you bear them in mind.

MR. SPENCE: With your lordship's permission, I would like to go on with Mr. Armstrong now.

THE CHAIRMAN: Yes. Mr. Armstrong has been standing there for a long time now very patiently waiting.

JOHN E. ARMSTRONG - Recalled

EXAMINATION BY MR. SPENCE:- (Cont.)

Q. Mr. Armstrong, yesterday you said something to the effect that each co-operative project involves a unification of competitive facilities or operations involved in that project, and you added that invocation of the arbitral tribunal would add an element of force to such co-operation or unification. What are the views of the Canadian Pacific with regard to co-operation and unification?

THE CHAIRMAN: You say co-operation and unification?

MR. SPENCE: Mr. Armstrong mentioned the word "unification" and I think perhaps we had better get the views on the record.

THE CHAIRMAN: Tell us what he means by unification ?

MR. SPENCE: Q. What did you mean by unification, Mr. Armstrong?

A. What I had in mind in the term unification was the term "unification" as used by Sir Edward Beatty some years ago.

THE CHAIRMAN: Q. You mean the unification of both railways?

A. Yes, sir.

Q. Under one management?

A. I think the unification was to be under two managements, if I am not mistaken.

Q. What, then, would be the unification?

A. Unification of all physical facilities; operate the physical facilities as one railway, with dual management.

Q. Dual management acting together, co-operating? If they were separate - -

A. I cannot explain that, sir.

Q. Perhaps we can get the proposal; it must have been in writing; it must have been expounded at the time -- I know it was -- and discussed and everything else. That is, if you are going to mention it at all we had better know exactly what it is.

MR. SPENCE: Perhaps we can go on without discussing unification, because I think perhaps it is not material to this enquiry.

THE CHAIRMAN: No, but you asked Mr. Armstrong; you used the word "unification" yourself.

MR. SPENCE: Well, I have not the actual

proposal here, my lord. Perhaps I can produce that letter and give an absolutely accurate explanation of what Sir Edward Beatty proposed. At the present time, as I understand it, we are not advocating unification or anything of that nature at all, and what I really wanted to draw from Mr. Armstrong by my question was that we are not here to propose or really to discuss unification, but I would like to get Mr. Armstrong's views on the other word he used, co-operation.

THE CHAIRMAN: All right.

MR. O'DONNELL: Then we are to forget about the use of the word "unification"? That is not in play?

MR. SPENCE: I would think so, yes. Mr. Armstrong said, I think, that a co-operative measure was unification on a small scale of those particular facilities; but let us stick to the word "joint co-operative project".

THE CHAIRMAN: Do you call the running of a pool train unification to that extent?

MR. SPENCE: I think so, to that extent, yes, my lord.

Q. Now, what is the Canadian Pacific's view as to co-operation, Mr. Armstrong, between the two railways?

A. The Canadian Pacific is in favour of co-operation between the two major railway systems insofar as co-operation can be brought about without serious detriment to the competitive position of either railway. It is opposed to any type of so-called forced co-operation because it believes that co-operation, cannot be forced.

Q. Now, has progress been made in co-operation under the Canadian National-Canadian Pacific Act?

A. Yes. Under co-operation and without invoking an arbitral tribunal, 17 studies have resulted in co-operative action producing an annual joint net economy of \$1,189,240 under the conditions existing at the times the reports in regard to the several co-operative projects were submitted by the Joint Co-operative Committee to the Joint Executive Committee.

Q. And those projects are listed in the Canadian Pacific's submission, Part I, at pages 132 and 133. Yes?

A. Under the depressed conditions of the nineteen-thirties, when the facilities of neither railway were being used to anything like their capacity, it was not possible to make economies by merging certain competitive facilities and operations of the railways. The estimates of savings by such co-operative effort were based upon the then existing depressed conditions. For example, where one pool train could replace two trains operated independently by the railways there was a saving. These savings may not exist under present-day conditions. If that pool train consistently operates in two sections there may be little if any saving in train mileage or costs as compared to the operation of two independent trains. When both railways are operating at or near full capacity, as they have been during and since the war, there is relatively little saving to be made by co-operation.

Q. Relatively little saving?

A. Relatively little saving to be made by co-operation.

Q. In your opinion, Mr. Armstrong, is there opportunity for further co-operation between the two major railways?

A. In my opinion, some further opportunities for co-operation between these major railways may be discovered in the future, but I doubt that under present traffic conditions such co-operation can attain to further estimated joint net annual savings equal to those listed for the co-operative projects now in effect.

Q. You have mentioned the Joint Executive Committee and the Joint Co-operative Committee. Could you give a brief explanation of how those committees work?

A. Under directions from the Joint Executive Committee the Joint Co-operative Committee has handled most of the co-operative matters dealt with since December 1932. From time to time, however, the Joint Executive Committee set up special committees to deal with specific co-operative matters.

Generally, however, the method of procedure in developing a co-operative project is that under the instructions of the Joint Executive Committee the Joint Co-operative Committee has determined the principles upon which the investigation of each project should proceed and, with the consent of the Joint Executive Committee, has arranged for the appointment of a Joint Local Committee composed of appropriate officers of each railway, familiar with the local conditions, to collect all relevant facts and to submit a report thereon to the Joint Co-operative Committee.

When a complete report has been received from the Joint Local Committee it is examined by the

Joint Co-operative Committee to determine the overall gross saving which might be expected to result from the adoption of the proposal, the capital expenditure, if any, necessary to achieve this saving, the effect of the adoption of the suggestion upon the operation of either or both railways, the loss or gain, if any, of traffic which is likely to ensue from its adoption, and the effect of its adoption upon public convenience.

If, having examined all ^{the} factors involved, the committee concludes that on balance the proposal is one which it seems advisable to adopt if a satisfactory agreement between the two railways can be reached, it turns its attention to the principles upon which an agreement should be drawn in order to equitably divide the burden and advantage between the two railways. Having reached agreement upon such principles the committee then prepares a report to the Joint Executive Committee containing recommendations as to the carrying out of the proposal. If approved by the Joint Executive Committee this report is returned to the Joint Co-operative Committee to work out the details and put them in form for drafting of an agreement by the law departments of the two railways. In many cases, approval of the Board of Transport Commissioners must be obtained before effect is given to the agreement.

Investigation of a co-operative project must be made by officers familiar with that particular situation. A Joint Local Committee must, therefore, consist of officers engaged in the day-to-day operation of the railways they represent, and the work of a Joint Local Committee must be subordinated to the regular

duties of such officers.

Q. Mr. Armstrong, in the brief of the Canadian Pacific, at pages 132 to 138 inclusive, a great number of projects are listed, some of which have been accomplished and all of which have been given study. Can you tell me how these projects or projects of this kind were originated?

A. Generally, these projects were originated by the Joint Executive Committee on its own initiative or were recommended to that Committee by the Joint Co-operative Committee. Co-operative measures discussed before the Duff Commission, as well as other measures suggested by members of the Joint Executive Committee, were considered. As the various studies by the Joint Co-operative Committee progressed, further ideas for possible co-operation were developed by it and were recommended to the Joint Executive Committee. Both the Joint Executive Committee and the Joint Co-operative Committee welcomed suggestions, and pertinent suggestions were assigned to the latter committee for study.

Q. At pages 132 and 133 of Part I of the Canadian Pacific submission there are 17 co-operative projects that are now in effect, with an annual joint economy of \$1,189,240. That figure is shown at the foot of page 133.

THE CHAIRMAN: Tell me this, Mr. Spence: do you give dates here? When, for instance, was the last co-operative agreement entered into?

MR. SPENCE: I see one, Alix-Nevis, which is a little below the centre of page 133, in which the effective date was October 18, 1948. The one below that, Trelle Junction-Morinville, Alberta, the

effective date was September 1, 1947.

THE CHAIRMAN: Those appear to be the latest?

MR. SPENCE: I think those are the latest, yes, my lord.

THE CHAIRMAN: I see. In the case of this one in Alberta, the Canadian National abandoned nine and a half miles of line and used Canadian Pacific line between these points, effective date October 18, 1948.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: That is the last one?

MR. SPENCE: That is the last one, yes, my lord.

Q. Mr. Armstrong, have you anything to say about these projects that are now in effect?

A. Nothing other than to say that they are in effect and that the estimated annual joint economy is that estimated under conditions existing at the times the respective reports in regard to the several projects were submitted by the Joint Co-operative Committee to the Joint Executive Committee.

Q. Commencing on page 134, there are fifteen co-operative studies listed indicating a further estimated annual joint net economy of \$774,525, and that figure is shown near the middle of page 135. Have you anything to say about those studies?

A. I would point out that the first three are line abandonments projects approved by the Board of Transport Commissioners but not yet in effect, that the next one is a line abandonment project considered by the Board of Transport Commissioners but for which no order has as yet been issued, that the next nine are line abandonment projects disallowed by the Board of Transport

Commissioners, and that the last two are projects recommended by the Joint Co-operative Committee but not proceeded with.

THE CHAIRMAN: Pardon me a moment. Mr. Spence, reference has just been made to projects disallowed by the Board of Transport Commissioners. Perhaps we could hear some more about them. It would be interesting to know why they were disallowed, who if anybody opposed them, and so on.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: I am not saying right now, but bear that in mind. It would give us an idea of how the Act works out, you see.

MR. SPENCE: I think possibly Mr. Armstrong may have something to say about that in a few minutes.

Q. The first three of those are line abandonment projects approved by the Board of Transport Commissioners but not yet in effect. Now, perhaps you would care to say something further about these, Mr. Armstrong. The Middleton-Bridgetown abandonment, the Langdon-Beiseker, and the Forth-Ullin?

A. The Middleton-Bridgetown Canadian National abandonment, I would say that the Province of Nova Scotia, the Municipality of Annapolis, the Towns of Bridgetown and Middleton, and the owners of the fruit warehouses along the line of the Canadian National from Middleton to Bridgetown in 1939 appealed to the Governor-in-Council from the decision of the Board of Transport Commissioners soon after that - -

THE CHAIRMAN: Q. Pardon me. A decision to what effect?

A. Approving it.

Q. Approving of the abandonment?

A. Approving the abandonment, yes, sir. That is under the heading of "Abandonment Projects Approved by the Board of Transport Commissioners but not Effective."

Q. And what happened before the Government?

A. These parties appealed in 1939 to the Governor-in-Council from the decision of the Board of Transport Commissioners soon after that Board had approved this project, and the appeal is still pending.

Q. Since 1939?

A. Yes, sir.

Q. And the abandonment has not yet taken place?

A. Has not yet taken place.

Q. Trains are still running?

A. Trains are still running, yes, sir.

MR. SPENCE: Q. The Langdon-Beiseker?

A. In connection with the Langdon-Beiseker Canadian National-Canadian Pacific abandonment, I would say that when the Board of Transport Commissioners approved this project in 1941, they somewhat altered the track arrangements contemplated by the railways and correspondingly somewhat reduced the estimated annual joint economy of the project. The elevators at Inverlake, Valroy

and Keoma on the Canadian Pacific line to be abandoned were practically filled to capacity and it was estimated that there were still one hundred thousand bushels of grain in the hands of farmers adjacent to these points. With another crop coming in a few months there was the possibility that the grain storage situation in the fall would be even more acute than in the spring of 1941. It was felt, therefore, that it would be necessary to operate trains over the Canadian Pacific line north from Langdon until such time as the situation cleared up, as it would not have been in the public interest to abandon that line at that time. The abandonment, therefore, was deferred.

Q. Then the heavy traffic of the war came along, I suppose. Now, the Forth-Ullin abandonment project, can you say anything about that?

A. In connection with the Forth-Ullin Canadian Pacific-Canadian National line abandonment, I would say that immediately after the approval of this project by the Board of Transport Commissioners in 1942 a Member of Parliament, on behalf of the farmers, the business people and others affected by the proposed abandonment, protested the Board's decision to the Minister of Transport and requested that abandonment be postponed until after cessation of hostilities. Shortly thereafter the same Member of Parliament appealed to the Governor-in-Council. This appeal was considered by the Cabinet on November 5, 1946, and was disallowed. In 1947 three serious protests were filed against ^{this} abandonment. In view of all these - -

THE CHAIRMAN: Q. Filed where, Mr. Armstrong?
Filed with whom?

A. I think all three with the Board of Transport Commissioners. I know in one case the Canadian Pacific

received a copy which they said they were going to file with the Board of Transport Commissioners, and in another case received a copy of what they had filed. In fact, I think they received that through the Board of Transport Commissioners.

COMMISSIONER INNIS: Q. What is a serious protest?

A. A very substantial percentage of the residents, business people and others in that immediate territory.

THE CHAIRMAN: Go on, then, Mr. Armstrong.

MR. SPENCE: Q. Then there have been further developments in that territory?

A. In view of all these, and of recent developments in Alberta, particularly in connection with the discovery and development of oil fields, the extent of which is as yet unknown, the advisability of abandoning this line seems very doubtful.

Q. Then I see under the next heading, the Dranoel-Medonte and Lindsay-Bobcaygeon abandonment -- how did it happen that the Board of Transport Commissioners issued no order in connection with this project, Mr. Armstrong?

THE CHAIRMAN: Are you into another classification?

MR. SPENCE: Yes, my lord. In the middle of page 134 there is a heading with only one case under it -- "Line Abandonment Projects Considered by Board of Transport Commissioners but no Order Issued" -- and I wanted an explanation of why no order was ever ordered in that case.

Q. Could you tell the Commission that, Mr. Armstrong

A. Subsequent to the Board hearing- -

THE CHAIRMAN: Q. When was the hearing? When did it take place? About when? What year was that?

A. I would say 1940 or 1941. I can give you the exact date in a moment.

Q. Well, that is all right; that is near enough.

A. Subsequent to the Board hearing, local interests at Lindsay, Orillia and Uthoff pointed out that war industry was rapidly increasing on the line to be abandoned and urged that the project be deferred. The Canadian Pacific submitted the matter to the Board of Transport Commissioners, who agreed, and deferred issuing an order under the judgment of July 10, 1940. The judgment was issued, but they made no order under it. An order has not yet been issued.

MR. SPENCE: Q. Now, what have you to say as to the next class of cases, the nine line abandonment projects disallowed by the Board of Transport Commissioners?

A. In connection with the Arnprior-Eganville Canadian National abandonment, the first one on the list, the Board of Transport Commissioners approved the project in 1940 but in 1941, upon application of J.R. Booth Limited, it agreed to hold a re-hearing of this case and issued an order rescinding the approving order. This re-hearing has not yet been held.

THE CHAIRMAN: In the meantime what has happened?

MR. SPENCE: No abandonment has taken place, my lord.

THE WITNESS: The other eight line abandonments were disallowed because the Board was unable to find that the burden which might be imposed upon the railway company concerned through continued operation

of the line of railway would prove greater than the loss and inconvenience to be suffered by the public as a result of the abandonment.

THE CHAIRMAN: Q. You say eight other cases?

A. Eight other cases. There werenine - -

Q. In each of these eight cases can we be told what proceedings took place, whether the applications were opposed by anybody?

MR. SPENCE: The applications were opposed in certainly all the western cases by the Provinces as well as by the residents along the line, the municipalities, and so on. In fact, in Manitoba two counsel travelled with the Board when the Board was considering the line abandonments in Manitoba, and offered opposition to the abandonments at each point where the Board stopped.

THE CHAIRMAN: Counsel representing whom?

MR. SPENCE: Counsel representing the Province of Manitoba, my lord. In Alberta, for example, my friend Mr. Frawley himself appeared in opposition to the - -

MR. FRAWLEY: Not that one. You have to put me down where I applied, in those that were not successful I appeared in the one at page 134, the Langdon-Beiseker Case, and the railway won that one. I did not appear in the Carbondale-Egremont Case. In fact, I was going to ask Mr. Spence to be good enough to say whether or not the Province appeared in that Carbondale-Egremont Case. I know there was opposition, but my recollection is that the Province as such did not appear. But in the Langdon-Beiseker abandonment I appeared and was unsuccessful.

THE CHAIRMAN: On page 134, Mr. Spence -- I am sorry to delay matters, but you have down there "line

Abandonment Projects Recommended by Joint Co-operative Committee but disallowed by the Board of Transport Commissioners." The first one there is Arnprior-Eganville. Have you told us who opposed that?

MR. SPENCE: Arnprior-Eganville -- I am speaking from memory, but the Province I think did not oppose that. That is the Province of Ontario.

THE CHAIRMAN: Who did oppose it?

MR. SPENCE: The Municipalities. Perhaps I should not - -

THE WITNESS: May I interject on that, Mr. Spence?

MR. SPENCE: Yes, perhaps Mr. Armstrong had better tell us.

THE WITNESS: In connection with this, I will re-read what I gave a few minutes ago. in connection with the Arnprior-Eganville Canadian National abandonment, the Board of Transport Commissioners approved the project in 1940 but in 1941, upon application of J.R. Booth Limited, it agreed to hold a re-hearing of this case, and issued an order rescinding the approving order.

MR. O'DONNELL: And the re-hearing has not yet been held.

THE WITNESS: And the re-hearing has not yet been held.

THE CHAIRMAN: Now, the next one, Cataract-Fergus.

MR. SPENCE: Cataract-Fergus is in Ontario, my lord. I appeared on that case, and my recollection is that it was opposed by the Municipalities along the line to be abandoned, and opposed by the Counties, but not opposed by the Province.

THE CHAIRMAN: By the Municipalities, the Counties?

MR. SPENCE: Yes, my lord, the Municipalities and Counties that would be effected by the abandonment.

THE CHAIRMAN: What about the MacGregor-Varcoe? That is the one you spoke about?

MR. SPENCE: Yes -- MacGregor-Varcoe, Louise-Deloraine, Portage la Prairie-Gladstone, Hamiota-Miniota, Halboro-Beulah, Reston-Wolseley.

THE CHAIRMAN: All you have in Manitoba there, you seem to have five cases; is that right?

MR. SPENCE: Five cases, yes, my lord.

THE CHAIRMAN: Were they all opposed?

MR. SPENCE: Well, I think I am correct in saying they were all opposed by the Province of Manitoba. I was not personally present at those hearings, but I have read the proceedings, and I think it is correct that the Province opposed them all.

THE CHAIRMAN: Then there remain one in Saskatchewan and one in Alberta. In Saskatchewan, Reston-Wolseley, who opposed that?

MR. SPENCE: I cannot speak about that, my lord. I do not recall at the moment whether that was opposed by the Province of Saskatchewan or not, but I can find out.

THE CHAIRMAN: Then what about the Carbondale-Egremont?

MR. SPENCE: Carbondale-Egremont, Mr. Frawley says he did not oppose that one, and of course I have no reason to doubt that.

MR. FRAWLEY: It was opposed, and I was only asking my friend - -

THE CHAIRMAN: Who did oppose it?

MR. FRAWLEY: I recall it was opposed by the municipality, and was opposed very vigorously.

Just while we are on the point, let us go back to page 134, speaking of the Langdon-Beiseker matter, just to have the record perfectly clear.

THE CHAIRMAN: Which matter is that?

MR. FRAWLEY: Langdon-Beiseker, the case in which I appeared personally. It is called a project approved by the Board but not effective. In that case I appeared as counsel for the farmers concerned. My friend may say that is a distinction without a difference; in other words, I was assigned to act for the farmers concerned. The Province as such did not actually appear as a party.

THE CHAIRMAN: In any event, you lost?

MR. FRAWLEY: I lost it, in any event.

COMMISSIONER INNIS: What was the explanation of that conspicuous failure?

MR. FRAWLEY: Well, probably the fact that I was there, sir, to start with. In the case which the railways put up, they challenged our case that there would be great inconvenience to the farmers, to have to draw their grain across country to these other elevators that Mr. Armstrong has told us about. That was the nature of the case, sir, that if the line was abandoned they would have to use the elevator. I want to be perfectly frank about that. These farmers would come in and give their evidence, and in each case the Canadian Pacific counsel -- Canadian National counsel were there too -- would ask these farmers how they had come into Calgary that day to appear at the hearing, and they would

say they had come in by bus or in their own cars. Then they would be asked how they got their goods to market, their farm produce to market, their livestock for instance, and the answer would be, mostly by truck; and how they got other things out to their co-operative stores, and so on, and the answer would be, by truck. But of course, the elevators were there, and the grain had to move by rail. So, to be perfectly frank, that was the general nature of the resistance that the farmers made and of the case which the railways made out.

MR. MacPHERSON: In respect of the Reston-Wolseley hearing, I am not sure whether the Province was represented or not, my lord. I do recollect that hearing. I was not involved in it at all, but I do recollect that the burden of the opposition in Saskatchewan to the application was taken by the towns along the line south of Wolseley, and I remember the counsel who led was Mr. H. Thompson, K.C., who is now Judge Thompson; he was the leader. I do not recollect whether anybody appeared on behalf of the Province or not. I think I should say, in fairness, I believe that the Province, the Government of the day, supported the position taken by Mr. Thompson. That is quite an old part of the Province of Saskatchewan; there were a lot of towns along that branch.

MR. FRAWLEY: I am very glad Mr. Spence has called my attention to the actual judgment of the Board in this Langdon-Beiseker case. There, according to the records of the Board of Transport Commissioners, Mr. J. J. Frawley, K.C. and Mr. D. N. Gardner appeared for the Province of Alberta, and the Municipalities interested. I said that perhaps it was a distinction without a difference, but I recall that the Government instructed

me to appear there on behalf of these farmers and Municipalities who were interested.

COMMISSIONER ANGUS: When the Board considers what weight should be given to opposition by a Provincial Government or by the Municipalities does the Board take account of whether or not the Provincial Government is one which is regulating trucks?

MR. FRAWLEY: Well, certainly in Alberta that question did not come up, sir. In the Province of Alberta that question was never raised. I would say, sir, that the Province of Alberta was such in this case in which I appeared received no particular consideration. I was there, as the record says, for the Province, but really counsel assigned to these Municipalities and these farmers. The people I was really acting for were these farmers. But the question of whether or not we regulated trucks at that time did not come up, sir. In fact, I do not think that the fact that the Province opposed as the Province had any more weight than the fact that John Brown, who would have to haul his grain ten extra miles -- I do not think it has any more weight at all than Mr. Brown.

THE CHAIRMAN: In that case the Board held against the opposition?

MR. FRAWLEY: In that instance that is true. It was a perfectly fair trial, and they held against our contention.

MR. SPENCE: But in these other cases the Board supported the opposition and refused to allow the abandonment.

COMMISSIONER INNIS: How many cases went before the Governor-in-Council?

MR. MacPHERSON: One.

COMMISSIONER INNIS: Just one?

MR. MacPHERSON: One, I think.

THE CHAIRMAN: I think Mr. Armstrong mentioned two.

MR. SPENCE: Yes, I think so.

THE CHAIRMAN: He mentioned one in 1939, as to which he said there has been no decision yet handed down, and the other one later.

THE WITNESS: The first was Middleton-Bridgetown, and the second was Forth-Ullin.

THE CHAIRMAN: Q. What was the second one?

A. Forth-Ullin; that was dismissed by the Governor-in-Council.

Q. The appeal was dismissed?

A. Yes.

MR. FRAWLEY: Yes; the appeal in that one was not by the Province of Alberta; the appeal was by a Member of Parliament.

THE WITNESS: Yes.

COMMISSIONER INNIS: By a liberal member?

MR. FRAWLEY: Well; if it was Forth-Ullin, no, I do not think so.

THE CHAIRMAN: What year was that?

MR. FRAWLEY: 1942, the hearing.

THE WITNESS: The Forth-Ullin, my lord?

THE CHAIRMAN: Yes.

THE WITNESS: The appeal was made in 1942, and the decision on November 5, 1946. It was dismissed on November 5, 1946.

COMMISSIONER ANGUS: When a line is abandoned, does that mean that the service is completely discontinued,

or does it mean further that the rails are taken up and further traffic made impssible?

MR. SPENCE: It means that the rails are taken up as a general rule. There have been cases in which an abandoned line has been allowed to lie for some years, and then eventually the rails are taken up as they are needed elsewhere; but as a rule I think it is correct to say that when a line is abandoned one of the objects is to retrieve the salvage in the rails and get rid of the necessity of maintaining the ditches and fences and that sort of thing. The land is disposed of to the adjacent farmers, and all responsibility of the railway ceases..

THE CHAIRMAN: And if an abandonment order is rescinded, do you have to put the rails back again?

MR. SPENCE: I do not know that the case has ever occurred.

THE WITNESS: Mr. Spence, may I speak on that for just a moment, please?

MR. SPENCE: Yes.

THE WITNESS: I believe the Board of Transport Commissioners only authorizes abandonment of operation of the line. The rail itself may or may not be taken up, at the option of the owner.

COMMISSIONER ANGUS: Q. At the option of the line?

A. At the option of the owner, yes, sir.

THE CHAIRMAN: Have you any cases where abandonment was asked for and allowed, and then after a while the traffic resumed again?-- any such cases?

MR. SPENCE: Q. Perhaps Mr. Armstrong can say that.

A. I would point particularly to the abandonment made by the Canadian Pacific exclusively between Lindsay and Orillia.

THE CHAIRMAN: Q. Was that abandonment an abandonment made by order of the Board, applied for?

A. We applied for an order to cease operation of the line between Lindsay and Orillia.

Q. And you obtained it?

A. And that was granted in 1932. In 1937 we took up the track and in 1940 or 1941 we seriously need^{ed} that track to handle the business that was moving.

Q. On account of the war?

A. On account of the war business.

COMMISSIONER INNIS: Q. Did you put it down?

A. No. It was too expensive to put down and materials were not available at that time.

MR. SPENCE: I think you told the Commission, Mr. Armstrong, that these eight line~~s~~ abandonments were disallowed because the Board were unable to find that the burden which might be imposed upon the railway company concerned through continued operation of the railway ^{line of} would prove greater than the loss and inconvenience to be suffered by the public as a result of the abandonment. What have you to say about these two projects which are noted on page 135 as recommended but not proceeded with?

A. The first one of these is for joint switching, Mimico-Swansea and North Toronto-Leaside areas. Although for this project the joint co-operative committee report contemplated what seemed to be a comparatively simple co-operative undertaking, more detailed investigations in connection with the preparation of an agreement to implement the proposal developed unforeseeable difficulties, and final

agreement has not yet been reached.

Q. What about the Bala Park Wanup abandonment?

A. In connection with the Bala-Park-Wanup Canadian National Line abandonment, I would say that in order to bring about equitable distribution of burden and advantage it is helpful, in some cases such as for example in the abandonment of some portion of a railway's main line, to have at the same time a corresponding abandonment by the other railway. There was no Canadian Pacific main line abandonment in contemplation.

Q. That is, a corresponding abandonment somewhere else?

A. Yes, a corresponding abandonment elsewhere.

Q. Yes?

A. There was no Canadian Pacific main line abandonment in contemplation corresponding to the Bala Park-Wanup abandonment by the Canadian National. The ~~letter~~, therefore, was held in abeyance until such a Canadian Pacific abandonment might be developed. Meantime war came upon the country.

THE CHAIRMAN: What is the purpose of that method of proceeding? Is it so that one railway will not secure an advantage over another? Is that the idea?

MR. SPENCE: Yes. These agreements, when they are made, are made in perpetuity and you have to estimate into the future what possible traffic may be, ^{and} what the savings may be. You put the best figure on it you can. But you may be failing to take into account developments that may occur in the future. Perhaps I should say that the result may be that ten years or twenty years from the date on which this perpetual agreement was made, the situation might have developed to such an extent that the

previous agreement would be very unfair to one party.

THE CHAIRMAN: The consideration is the abandonment by the other party in some other locality. Is that right?

MR. SPENCE: They try to balance the two together so that if there is a disadvantage to one party twenty years from now in one case, it will be balanced.

THE CHAIRMAN: That is, in one locality?

MR. SPENCE: In one locality. If there is a disadvantage there, there will probably be a corresponding advantage in the other case.

THE CHAIRMAN:

. So that in this case, the Bala Park-Wanup abandonment, the proposal was to abandon 141.2 miles of Canadian National lines. Is that it?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Even though / that would have meant a saving in that locality, it was not proceeded with because the Canadian Pacific could not be called upon to make a similar sacrifice in some other part. Is that right?

MR. SPENCE: As I understand it, it was deferred for a time.

THE CHAIRMAN: For that purpose?

MR. SPENCE: For that purpose, so that another one would turn up.

THE CHAIRMAN: Do you think that comes within the Act? Do you think the Act permits that sort of consideration to be used?

MR. SPENCE: . It would be exceedingly difficult to get one company to go into an agreement in perpetuity in which its interests might in the course of years be seriously injured if it did not have a chance of evening up by a corresponding agreement somewhere. In order to progress in co-operative measures, co-operative spirit, they have

tried to balance off these possibilities. It is easier to reach an agreement if you have two of somewhat similar nature, - that is, two projects of a somewhat similar nature - considered together.

THE CHAIRMAN: Yes. I think it is helpful to us that there is at least one case of that order, because it is a problem that I must say that I had not thought of. Here apparently is an advantage that might have been secured under the Act, but which cannot be secured because the Canadian Pacific is not in a position to render a quid pro quo to the other railway. That is right, is it not?

MR. SPENCE: I think what we thought was an advantage at that time; anyway, it was deferred for a time until another one should turn up that could be balanced against that. There may have been some delay.

THE CHAIRMAN: That is, the C.N.R. was not to be called upon to make this particular sacrifice until you could make a similar one somewhere else. Is that it?

MR. SPENCE: Yes. That was the idea.

Q. Then could you just proceed, Mr. Armstrong, to describe what happened in that case.

A. In order to pick up the line of thought, I will read the last sentence that I read before.

THE CHAIRMAN: Pardon me, but what are you going to read? Would you repeat what you said?

A. In order to pick up the trend of thought, I will read the last sentence I read before, because the following statements depend on it.

MR. SPENCE: You are still speaking of the Bala-Park-Wanup abandonment?

A. Yes, still speaking of the Bala-Park-Wanup abandonment. The latter, therefore, was held in abeyance until such a Canadian Pacific abandonment might be developed.

Meantime war came upon the country. During and subsequent to the war both the Canadian National line to be abandoned and the Canadian Pacific line, over which joint co-operation was to have been arranged, were both used substantially to capacity. It is now doubtful that the traffic over the two lines could be handled over either one of them alone.

Q. On the lower part of page 135 there are two projects noted which were investigated in the first instance as co-operative projects but were later proceeded with as exclusive projects. That is to say, ^{the} abandoning company decided to proceed independently, as I understand it, and give up its operation without sharing the savings or being compensated by the other railway for a loss of traffic. Would you explain that situation?

A. The first of these is the Ste. Therese-St. Eustache Canadian line in Quebec which was initially to have been a Canadian Pacific abandonment. The Ste. Therese-St. Eustache Canadian Pacific abandonment was first reported upon by the joint co-operative committee as a co-operative territorial abandonment. In order to define that term "territorial", I may say that the Canadian Pacific was to take up its track and abandon it, not only the railway but the territory that the railway served. Subsequently more detailed study of the situation indicated that under a co-operative undertaking the financial benefit to the Canadian Pacific would be less than it would be were the Canadian Pacific to make an exclusive abandonment. This, of course, would have been a co-operative absurdity. It was arranged, therefore, that the abandonment would be undertaken as an exclusive Canadian Pacific project and this was done.

Q. Yes. Then we come to the Joliette-Montfort Junction abandonment.

A. In connection with the Joliette-Montfort Junction and Fresniere-Shawbridge Canadian National abandonments, and the two were combined in the studies, the original joint co-operative committee report contemplated abandonment of these lines as a co-operative project with joint use of 46.5 miles of ~~the~~ Canadian Pacific line. Subsequent study, however, indicated that the Canadian Pacific line could not accommodate the Canadian National traffic using their Fresniere-Shawbridge line and the application to the Board of Transport Commissioners dealt only with the Joliette-Montfort Junction portion of the proposal. Subsequently, however, the Canadian National completed their own new line from Mount Royal to Bout de L'Isle which made it ^{un}necessary for them to secure running rights over Canadian Pacific lines and permitted them to abandon their ~~the~~ Joliette-Montfort Junction ^{line} as an exclusive project.

Q. Then at the foot of page 135 there is an item with respect to Birds Hill-East Selkirk Manitoba line abandonment. Do you care to say anything about that?

A. The Canadian Pacific submission states that the following project ^{investigated} ~~or~~ recommended ~~was~~ subsequently found to be inadvisable on account of increasing industrial development in the territory. All I can say is that in a developing country, conditions change rapidly. Such a change took place in this case before the recommended project could be implemented.

Q. Then at the top of page 136 and continuing part way down page 137 there are listed, I believe, twenty-eight co-operative proposals which were found to be uneconomical. Do you care to say anything about those proposals?

A. Each of these twenty-eight proposals were studied and each would have resulted in a joint net annual loss to the railways or in a joint net annual saving so small as not to warrant the expenditure required to make the proposal effective.

THE CHAIRMAN: Q. Both railways agreed in those cases not to go any further?

A. Yes, sir.

MR. SPENCE: Yes, my lord.

Q. Page 137 and running over onto page 138 there are listed fifteen co-operative proposals which study was interrupted owing to war activities. Could you just explain those, Mr. Armstrong?

A. When the war interrupted these studies they had progressed to various stages of development. On some of them the joint local committee's reports had not yet been submitted to the joint co-operative committee. On others, the joint local committee reports had been submitted to the joint co-operative committee, but had been returned to the joint local committee for further investigation. On a few, adverse joint local committee reports had been submitted to the joint co-operative committee but had not been finally analysed by that committee.

Q. On page 138 is a list of seventeen other co-operative proposals that have received study. In what way was the status of these proposals different from the status of the proposals about which you have just spoken?

A. With one exception, that exception being the proposal having to do with the abandonment of duplicate lines in the Sudbury-Winnipeg territory, these proposals were not in the hands of joint local committees. Some

of these proposals had been favourably reported upon by the joint co-operative committee and approved by the joint executive committee but subsequently approval of the joint executive committee had been withdrawn because of difficulties discovered when detailed information was developed in connection with the preparation of final agreements. Other proposals had been sufficiently investigated to indicate that they were uneconomical and further study of certain of them had been deferred because of changing conditions. On the whole, this list of projects could not be satisfactorily listed under any of the other project headings in the Canadian Pacific submission.

Q. On page 139 of the Canadian Pacific submission, in the second paragraph under the heading "Further Submissions, it is stated:-

"In addition to measures taken in accordance with the established joint procedures or pursuant to the 1933 Act, the two railways have been active in other forms of co-operation. For example the communications facilities of the two railways had been integrated to a considerable degree. "

Can you give the Commission some detail in regard to the integration of communication facilities?

A. Prior to 1933, the communications departments of the two railways had arranged for joint use of offices, staffs ^{and lines} in the event of fire and/or interruptions to lines, thus avoiding duplication of routes, etc. and the use of United States routes for detouring and had also arranged for joint advertising in so far as such was applicable, thus making savings in printing and distribution costs.

In 1933 these departments arranged for

pooling of transmission facilities to serve the Canadian Broadcasting Corporation.

In 1937 they arranged for joint remote control circuits facilities to customers other than the Canadian Broadcasting Corporation.

In 1938 they arranged for joint installation and use of underground cable facilities in urban centres.

In 1939 they arranged for pooling of telephoto transmission facilities.

In 1943 they arranged for joint facilities for telephone and teletype circuits for air traffic control.

In 1944 they arranged for pooling of messenger delivery service, nights, Sundays and holidays, at the large centres.

In 1945 they arranged for joint investigation and application of point to point radio communications.

In 1947 they arranged for pooling of canned music transmission to industrial plants, cafes, etc. in cities and also for pooling of teletype and Morse private wire circuit facilities.

From time to time, as opportunity offered, they have arranged for joint maintenance of the other railways teletype installation at outlying points, joint installation of a single teletype machine where traffic volume did not warrant duplication, joint use of pole and pin space on open wire pole lines, and for joint gathering of election returns.

Prior to 1933 joint telegraph office operation had been placed in effect in ten places. Since 1933 the communications departments have arranged for joint telegraph office operations at eight additional

places. The basis of distribution of revenue and expense at these offices is generally that the revenue from non-competitive business is retained by the company controlling that business and revenue from competitive business is divided in accordance with the division of such business/^{during}an agreed upon prior test period.

Expenses are divided according to distribution of revenue.

In 1946, 1947 and 1948, the communications departments of the two railways arranged for the withdrawal of duplicate telegraph offices on a reciprocal basis, without payment by either company to the other. The Canadian Pacific has withdrawn eighteen and the Canadian National twelve such offices.

COMMISSIONER ANGUS: Q. Are these agreements mostly for a stated period or are they terminable on notice, or are they perpetual?

A. Generally, they are in perpetuity.

THE CHAIRMAN: They are what?

A. In perpetuity.

MR. SPENCE: Agreements under the Canadian National-Canadian Pacific Act.

COMMISSIONER ANGUS: I am speaking of the type of agreement which is described on communications.

MR. SPENCE: I am not quite sure about that.

THE WITNESS: I think they vary in the various clauses.

COMMISSIONER ANGUS: Q. I was thinking of this arrangement or these miscellaneous arrangements you have just been discussing for the last minute or two.

A. I have not the detail for each one of these,

but I would judge that they would probably be for perpetuity or perhaps terminable^{ble} on specified notice or something of that kind.

MR. SPENCE: Q. At page 139, after reference to communications facilities, the submission goes on to say:-

"Also numerous co-operative measures involving the handling of express traffic of the two railways have been effected."

Can you give the Commission some detail in regard to express traffic.

A. Prior to 1933 the express traffic of both companies was handled by the Canadian Pacific -- and the dates that I shall give are the dates on which these were made effective -- between Kneehill and Bullfound, Alberta, arranged in 1930; between Vancouver and Victoria, B.C. arranged in 1931; between Calgary and Edmonton, Alberta on Saturdays and Sundays, arranged in 1932; and by the Canadian National, from St. John, New Brunswick to Truro, Nova Scotia, when Canadian Pacific boat connection was missed at St. John, arranged in 1931; between Debden and Points on Meadow Lake extension, Saskatchewan, arranged in 1932. Joint C.P.- C.N. express service had also been established on the Ontario Northland Railway in 1930.

Q. Those were all before the Act was passed. What has been done since the passing of the Act in 1933?

A. Since 1933 arrangements have been made for handling the express traffic of both companies^{by the Canadian Pacific} between Woodstock and St. John, New Brunswick, arranged in 1933; between Moose Jaw and Regina, Saskatchewan, arranged in

1934; between Woodstock and Fredericton, New Brunswick arranged in 1937; from Edmonton to Calgary, Alberta, when C.N. misses its own connection, arranged in 1937; between North Battleford^{battleford} and Rosemound, Saskatchewan, arranged in 1938; from Ottawa to Pembroke, Ontario, when Toronto Pool Train misses C.N. connection, arranged in 1942. Then by the Canadian National: Between St. John and Norton, nNew Brunswick, arranged in 1937; from Vancouver to Prince Rupert, B.C., arranged in 1938; and from St. John, New Brunswick to Halifax, Nova Scotia when C.P. boat connection missed at St. John, arranged in 1942.

During the recent reduction of Canadian National passenger train service, due to their coal shortage, arrangements were in effect for handling Canadian National express from Edmonton to Calgary to take care of traffic arriving at Edmonton on Canadian National trains Nos. 1 and 3, and from points north and west of Edmonton on Wednesdays and Thursdays.

The Canadian Pacific express handles air express ground service for T.C.A. ^{between} Lethbridge, Alberta, and its airfield, arranged in 1938; between Sault Ste. Marie, Ontario and its airfield, arranged in 1947; between Swift Current, Saskatchewan, and its airfield, arranged in 1947; and between Medicine Hat, Alberta and its airfield, arranged in 1947. It also handles air cargo ground service between Lethbridge, Alberta and its airfield; Medicine Hat, Alberta and its airfield; and between Swift Current, Saskatchewan, and its airfield, all three arranged in 1948. And the Canadian National Express handles express cartage for the C.P.A. between Montreal and Dorval Airport, arranged in 1947.

(Page 21078 follows)

MR. O'DONNELL: C.P.A. -- Canadian Pacific Airlines, isn't it?

A. Canadian Pacific Airlines.

Joint pick-up and delivery service operated by the Canadian Pacific Express has been arranged at Iberville, Quebec, and, based on Shawinigan Falls, in the Almaville territory, Quebec.

Joint express agencies are now in existence at fifteen salaried agencies and at fifteen commission agencies.

MR. SPENCE: Q. Now, that brings us to the end of the co-operative measures mentioned in the Canadian Pacific Submission. Could you now give in a few words an outline of what is being done at the present time by the Joint Co-operative Committee?

A. In comparison with the years of the depression there is very little scope for activity on part of the Joint Co-operative Committee at the present time. This is due primarily to the fact that, as I explained earlier, traffic volume is such that there is nothing like the same opportunities for savings by co-operative measures.

However, following a meeting of the Joint Co-operative Committee over a year ago the Canadian Pacific Section of that Committee instituted a survey of the Canadian Pacific System by requesting its Regional Operating Vice-Presidents, the Vice-President of Traffic, the Department of Research, the Hotel Department, the Department of Communications, and the Express Company to undertake in their respective fields:-

1. A review of all co-operative arrangements in effect to determine whether further savings

were possible under them.

2. A review of all matters already studied to see whether any of them warranted further consideration.

3. An inquiry to determine whether there were further possibilities of co-operation which would warrant study.

So far this survey has disclosed no further opportunities for substantial co-operative economies.

MR. SPENCE: Now, I intended to conclude by reading the argument at pages 139 to 141 of our submission Part I, but considerable reference has been made to that already in the discussion that took place this morning, so that terminates our submissions.

THE CHAIRMAN: You have finished with Mr. Armstrong?

MR. SPENCE: I have finished with Mr. Armstrong, yes, my lord.

THE CHAIRMAN: Before we begin the further examination of Mr. Armstrong, I wish somebody would inform me about this: Mr. Frawley, you read this morning the proposal made by this agricultural group about the application of this statute, and you, Mr. Shepard, read me your suggested amendment of the Province of Manitoba.

MR. SHEPARD: Yes, sir.

THE CHAIRMAN: I would just like to know this one point: is it the intention of either of these representations that if there is a co-ordinating body created to investigate and supervise these measures of co-operation, the decisions of that body should be final, or would we still have all over again the question that each case be considered publicly and opposition be

brought up, just as has been going on in the past by interested parties? I am not asking you to answer that now, but I think that is³ matter that you should bear in mind. We have seen now what occurs today. These matters are considered. The railways propose to undertake a certain economy by abandoning a line or by curtailing service in some respect; then there are hearings about that, and the interested parties oppose it, perhaps there is an appeal from the decision of the Board, and so on. I would like to know whether those who are asking for a stricter control intend that from now on measures recommended by the co-ordinating body -- call it what you like -- the superior body -- are to be final and done and not subject to hearings and opposition of interested parties, as so far has been the case. I say, do not answer me now.

MR. FRAWLEY: I think that would require an amendment to the Railway Act, sir. Perhaps Mr. Spence is more familiar than I am. There is provision in the Railway Act that all abandonments --

THE CHAIRMAN: The necessary amendments would follow according to what we adopted. I want to know what the desire is.

---The Commission adjourned at 1.00 p.m., to resume at 2.45 p.m.

(Page 20182 follows)

Ottawa, Ontario,
Friday, April 28, 1950.

AFTERNOON SESSION

JOHN E. ARMSTRONG, recalled.

COMMISSIONER INNIS: Before you start, Mr. MacPherson, I wonder if I could ask what would happen in case you were to carry out the proposal mentioned at the beginning, that is to say, drop the pool train arrangement, because they are not making any money. Suppose you go back to the early arrangement, is there any way in which the convenience to the public could be continued if you were to go back to the early arrangement? I mean in the sense of buying tickets or being certain that you were going to get access to whatever accommodation there was.

A. I imagine that under a reversion to the prior conditions, probably C.P. tickets would be on sale at the C.P. station and C.N. tickets at the C.N. station.

Q. But the public would not gain, or whatever gains the public had in convenience would then disappear?

A. Well, that would hold at Montreal only, because that is the only place in that particular pool territory, Montreal-Toronto, where there are different stations. At Toronto it is the Union Station, it is one side of the lobby or the other for tickets, and the way in which the public convenience might be better served, if at all, would be by the putting on of the fast train over the C.P. line serving Smiths Falls and Perth, which are now not directly served by the fast train. Smiths Falls is by the connection to the fast train that comes down from Ottawa.

Q. Yes, but I do not know that you quite have my point. I think that everyone appreciates now the

advantages in being able to get whatever accommodation is available. Now, assume that in the case of the Canadian National the Canadian Pacific are separate, and they run by separate trains, then that would no longer be the case?

A. No; you would go to one or the other or one and the other to find out.

Q. There would be no way of taking the present advantages if you went back --

A. I do not know. That might be worked out in the joint ticket office or joint ticket offices. I do not know. It has not been given consideration, as far as I know.

CROSS-EXAMINED BY MR. MacPHERSON:

Q. If you were going to Toronto, Mr. Armstrong, and bought a C.P.R. ticket and there was no sleeping accommodation on the C.P.R. train, and there was on the Canadian National, you would have to turn in your C.P.R. ticket and buy a C.N.R. ticket in order to get the accommodation?

A. Well, I think in effect that is what exists today with all trains other than the fast afternoon trains in each direction. You see, the night trains are running separately anyway, and there is the morning train, not a fast train, a morning train in each direction also that is a single train instead of two -- that is more or less the 9 to 10 a.m. train out of Montreal, out of Toronto, into the other end late the same afternoon.

Q. Mr. Armstrong, you caused to be filed Exhibit No. 284, showing 85 arrangements that had been made between the Canadian Pacific with other railways?

A. Yes, sir.

Q. And on page 5 you show the number of arrangements

that have been entered into since the Act came into force, and the number is 13.

A. Yes, sir.

Q. So that of the 85 arrangements you have 72 really antedating the Act?

A. Yes, sir -- well, 70 antedate the Act -- 72, I think you are right; that includes the other two that are not in the same category.

Q. Now, Mr. Armstrong, of these 13, according to page 5, the first one is with Essex Terminal. Is that a subsidiary of the Canadian National?

A. No, sir. All of these, as stated at page 1, not including arrangements made under the provisions of the Canadian National-Canadian Pacific Act 1933 -- no one of these 83 or 85 was made under the provisions of that Act.

Q. None of them under the Act at all?

A. None of them.

Q. But of those that I have been --

THE CHAIRMAN: That is what I understood.

MR. MacPHERSON: Q. Have there been any made apart from the Act, joint facilities, since 1933?

A. Yes, sir; those 13 that you are referring to.

Q. That is what I thought. These 13 that are on page 5, they have been made since the Act?

A. Since the Act, but not pursuant to the Act.

Q. Not pursuant to the Act; that is, they would have been made in any event?

A. Yes, sir.

Q. And have there been any arrangements made pursuant to the Act since 1933 in respect of joint facilities?

A. The 17 items now in effect under the Act --

Q. These are the only ones?

A. -- are the only ones that are in effect under the Act, yes, sir.

THE CHAIRMAN: When you say "these" you mean in the brief?

Mr. MacPHERSON: In the brief, yes, my lord.

Q. These that are in the brief, starting at page 132, are the ones that you refer to as having come in as a result of the Act itself?

A. Yes, sir.

16 Q. Then, turning to these projects on page 136, the projects found to be uneconomical -- that is, from the standpoint of the railways it would be uneconomical?

A. Yes, sir.

THE CHAIRMAN: Will you please repeat your question?

MR. MacPHERSON: My question to him was that those on page 136 which are captioned as projects found to be uneconomical, he means they were uneconomical from the standpoint of co-operation from the railways' viewpoint.

THE WITNESS: Yes, sir. What I mean by that heading, what that heading means, is that it would cost the railways more to adopt any one of those projects than not to adopt it.

THE CHAIRMAN: Q. So they were not adopted?

A. So they were not adopted, because they were uneconomical.

MR. MacPHERSON: Q. Had they been agreed to? They had never been agreed to; they were dropped as uneconomical?

A. They had been agreed to as uneconomical.

Q. Then on page 137 you give a list of the projects in which study was interrupted owing to war activities.

CHAPTER I. THE DISCOVERY OF AMERICA.

SECTION I. THE DISCOVERY OF AMERICA.

SECTION II. THE DISCOVERY OF AMERICA.

SECTION III. THE DISCOVERY OF AMERICA.

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SECTION IX. THE DISCOVERY OF AMERICA.

SECTION X. THE DISCOVERY OF AMERICA.

SECTION XI. THE DISCOVERY OF AMERICA.

SECTION XII. THE DISCOVERY OF AMERICA.

SECTION XIII. THE DISCOVERY OF AMERICA.

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SECTION XXVIII. THE DISCOVERY OF AMERICA.

SECTION XXIX. THE DISCOVERY OF AMERICA.

SECTION XXX. THE DISCOVERY OF AMERICA.

Has the study been renewed in respect of these items, these 15 items?

A. As far as the C.P.R. is concerned, by the survey that I refer to, at the close of my testimony, where we are making a complete survey of the system in connection with the three items that I mentioned.

Q. But that started only a year ago, I understand?

A. Yes, sir.

Q. So that for a period of ten years nothing was done in respect of a study of these projects at all, from 1939, say, until 1949, when your survey started again?

A. No, I do not think that is quite a fair statement, because work was going on in connection with them as opportunity offered, and as cited by the date in which certain of the projects are in effect, were made effective, the work leading up to make them effective was going on subsequent to 1939.

Q. Now turning to page 133 and these that became effective, 132 and 133, every one on page 132 became effective in 1933?

A. Yes, sir.

Q. And on page 133 the first two became effective in 1933?

A. Yes, sir.

Q. Then two became effective in 1936 -- line abandonments?

A. One in 1934, just prior to the two in 1936.

Q. That is the change in interchange location?

A. Yes, sir.

Q. Then two in 1936, one in 1941, one in 1948 and one in 1947?

A. Yes, sir.

Q. But for some reason or other the agreement

might have been entered into and there might have been delays occasioned before the Board of Transport or something of that nature which produced the delays until 1948 and 1947?

A. I think not.

Q. Do you know when this Alix-Nevis abandonment was agreed to between the companies?

A. It was reported to the Joint Executive Committee in 1935.

Q. In 1935?

A. Yes, sir.

Q. As being agreed to?

A. Yes, as recommended.

Q. As recommended. And then the next one --

A. That only is the first step, though. Then if the Joint Executive Committee approves that recommendation it goes back to the Joint Co-operative Committee to develop the factual information for an agreement.

Q. When was it approved by the Joint Co-operative Committee?

A. By the Joint Co-operative Committee?

Q. Yes.

A. In 1935.

Q. So that, while it appears here as having become effective in 1948, actually it was approved in 1935?

A. But not half of the work was done prior to 1935; only the generality of the study by the Joint Local Committee to develop whether it was economical at all, had been completed at that time.

Q. When was it passed on by the actual committee?

A. By the Joint Executive Committee?

Q. By the Joint Executive Committee.

A. That is Alix-Nevis, isn't it? In February 1935.

Q. So that that gets back to this, that, while it is shown on page 133 as effective as from October 18, 1948, so far as your committee is concerned, your co-operative efforts had been concluded in 1935?

A. No, sir.

Q. Well, what was there left to do?

A. In 1940 the Board of Transport Commissioners approved the abandonment. In 1947 they waived Section 154, Subsection 2 of the Railway Act in regard to it. Again in 1947 they recommended agreement to the Governor in Council for sanction. In 1948 they approved a connection at Alix. In 1948 they approved a connection at Nevis. In 1948 they approved operation of the connection at Nevis. Again in 1948 they approved the operation at Alix. The Governor in Council sanctioned the agreement in 1947, and actually it went into effect on October 18, 1948, so that we were some eleven days ahead of the approval of operation, that we went into operation.

Q. So far as your committee was concerned, however, the committee appointed under the Act, in principle it had agreed upon this particular project in 1935?

A. Yes, sir.

Q. That is what I mean. Anything that followed that was simply the machinery carrying it into effect?

A. Yes, sir, but that machinery included a very great deal of work.

Q. Well, probably. The decision was made back in 1935?

A. Yes, sir.

Q. And what about the next one, the Morinville one in 1947? Does that date back to 1935, too?

A. That I have very little information on. I am not sure that that can be regarded as being under the

Canadian National-Canadian Pacific Act. That is a joint arrangement, a co-operative arrangement, between the Canadian National and the Northern Alberta Railways. The Northern Alberta Railways, while it is owned fifty-fifty by the two railways, is not operated by either one of them.

Q. Mr. Armstrong, on page 137, among the projects on which study was interrupted owing to war activities is joint operation of lakehead terminals at Fort William and Port Arthur. Do you know anything of that project at all, Mr. Armstrong?

A. I know only of that, that the study was assigned to a Joint Local Committee. Would you like to have the date of that?

Q. Yes, if you do not mind.

A. I have not the date of the assignment. The situation in regard to it was that up to the start of the war no report had been received from the Joint Local Committee.

Q. And has any report been received yet in connection with it?

A. Not yet.

Q. Not yet?

A. Not yet.

Q. Now, that is a situation where you have a heavy movement of freight at certain times of the year -- Port Arthur and Fort William -- in grain; that is right, isn't it?

A. That is correct.

Q. And that is particularly heavy during the months of harvesting, from September on until the freeze-up, and then just before the opening of navigation and shortly after the opening of navigation?

A. I believe that is correct.

Q. And the area which is served, the terminal elevator area, is fairly well concentrated?

A. Well, it extends over several miles of water-front.

Q. Yes, it extends over several miles, but it is along the lake-front?

A. Yes, sir.

Q. And the question of terminal facilities has been considered for some time, has it not, joint terminal facilities?

A. To my knowledge only under this joint co-operative study.

Q. Do you know anything as to the savings that would be effected?

A. No, sir.

Q. You have no knowledge of that?

A. I have had no report.

Q. And you have no personal knowledge of it at all?

A. No, sir.

Q. And you have no personal knowledge as to the betterment of service to the elevators as a result of a joint facility of this kind?

A. No, sir.

Q. But, in any event, the committee which was to have reported before the war has not reported yet?

A. Correct.

Q. And would that be true as to all these other projects that are listed there, that there have not been reports?

A. Those items are in various categories. Some have had reports submitted and they have been returned for further information; some have not reported; some have

been reported upon adversely and the Joint Co-operative Committee has not yet given that final consideration. So it is a bit mixed up.

Q. Would this be fair, Mr. Armstrong, to say in the light of your evidence today and yesterday that since the war the first real revival of interest on the part of the Canadian Pacific was the survey that you told us of that started about a year ago?

A. I think that is probably correct.

Q. Yes?

A. From 1940 or 1941 on, the local operating officers, who after all must constitute the local committee to make the studies, were so overwhelmed with work, war work up to 1945, and for a short time after, and the post-war work that was only slightly less, in 1946, 1947 and 1948, that they simply did not have opportunity to carry on this other work.

Q. So that for a period of that nine or ten years practically nothing was done under the Act?

A. I think that would be a correct statement, yes, sir.

Q. And for the period prior to that there had not been the occasion, as we have mentioned before, where there was any dispute between the companies -- a dispute in the nature of being such that it would be referred to arbitration?

A. To the arbitral tribunal?

Q. Yes.

A. Well, nothing was referred to the arbitral tribunal.

Q. Nothing was?

A. No, sir.

Q. Well, did you agree on everything that came before you?

A. Oh, certainly not.

Q. But you did not disagree to the point where there would be a dispute?

A. We had not yet reached agreement.

Q. You had not yet reached agreement?

A. Yes, sir.

Q. And so the question of finality was never arrived at; that is about the position?

A. Yes, sir.

Q. So that if there was an issue that came before you and you did not agree to it, you would discuss it and then you would simply postpone final consideration of it?

A. No, I do not think we postponed any final consideration of it. When we got into our war work and had no time to consider it --

Q. Well, up until 1939 from 1933 there must have been a great many issues that came before you that you did not agree upon?

A. I think that every one of them is listed in our submission.

Q. Yes?

A. Yes, sir; and we managed to reach agreement on all of them except those that are still going on there, either under the heading of projects on which study was interrupted owing to the war or under the heading of projects which have recent study.

Q. Would it be the fact that some of these had been initiated by the Canadian Pacific?

A. Yes, sir.

Q. And had not been acquiesced in by the Canadian National?

A. Quite naturally.

Q. And others had been initiated by the Canadian National?

A. Yes, sir.

Q. And had not been acquiesced in by the Canadian Pacific?

A. Yes, sir -- provided that by acquiescence you mean that they had reached accord with a common understanding of the situation.

Q. That is what I mean, yes.

A. Yes.

Q. And was the file closed in connection with these?

A. No, sir.

Q. The files were left open?

A. Yes, sir.

Q. So that at no stage would you reach the point where there was a dispute within the meaning of the Act as you understood it?

A. As I understood it, correct.

Q. And you were on the committee yourself then --

THE CHAIRMAN: Mr. MacPherson, does that apply to those projects listed on page 138, "Other Projects which have received Study"?

MR. MACPHERSON: I take it it does. I will ask Mr. Armstrong.

Q. That applies to these other projects which have received study, on page 138?

A. Yes, sir; they are still open.

THE CHAIRMAN: Q. They are still open?

A. They are still open. There is nothing that has been closed because of disagreement, of which I am aware.

MR. MACPHERSON: Q. So that if it got to a

stage where there might be disagreement you simply left the file open; that would be a correct statement?

A. Well, I do not quite know how to answer that question, for this reason, that we were working on them right along up until the war work descended upon us, and we were so busy with war work we had to lay this work aside.

Q. But there must have been some of these, Mr. Armstrong, that started in 1933, and up until 1939 the files were kept open and they were not finally disposed of as having been rejected, and there were none of them referred to the arbitrators?

A. Well, there were files that were open for many different reasons.

Q. What I am getting at is this: you never had a disagreement to the point where a dispute, as we understand it, arose?

A. Correct.

Q. But you did not agree on everything that came before you?

QA. Quite naturally.

Q. No; I would think that was right, too. Now, the way you disposed of these matters on which you could not agree was simply by leaving the file open?

A. No, sir.

Q. Well, was there any finality to them?

A. The instructions to the Joint Co-operative Committee were, as I recall them -- and I am speaking now from recollection -- I recall the principle of it if not the words -- where the Joint Co-operative Committee was unable to reach accord in their studies or their understanding of things, they were to report their disagreement to the Joint Executive Committee. That was done numerous

times. The Joint Executive Committee ruled and turned the matter back to the Joint Co-operative Committee to proceed on the basis of the ruling. Those disagreements of that type existed not only in some of the items that are still under study but also in connection with some of the items that are in effect.

Q. Well, those on which you did not agree by 1939, they simply remained in open files; would that be right?

A. That would be correct.

Q. That would be correct?

A. Of others also that had not been closed.

Q. Remained in open files?

A. Yes, sir.

Q. But there would be a number of these projects initiated by one or the other of the parties and not acquiesced in by the other, but the initiating party never pressed the issue as a dispute?

A. Well, I think perhaps we are meaning different things when we speak of a project being initiated by one party and not agreed to by the other. If I may give an interpretation of that, so that I am sure I am talking to the same purpose as you are, if the Canadian National suggested that such-and-such be studied, not that such-and-such be done but that such-and-such be studied, I know of no instance where the Canadian Pacific refused to study, and vice versa, where the Canadian Pacific has suggested a thing I know of no instance where the Canadian National has refused to study.

Q. Well, do you know of any instance, any project, that came before the Co-operative Committee where you came to an impasse?

A. No, sir.

Q. You do not know of any?

A. I do know of where we reached a disagreement and our instructions in those cases were to refer the disagreement to the Joint Executive Committee.

Q. And that is the end of the file so far as you know?

A. No, sir. We would get a ruling and be told how to proceed.

Q. Then when you got that ruling?

A. We proceed accordingly.

Q. And if that ruling was to the effect that it was not acceptable to the Executive Committee, what then?

A. Well, if one section of the Joint Executive Committee said, "We think so-and-so," and the other section said, "We think so-and-so," I do not see quite how the Joint Executive Committee could say that it was not acceptable to them. They would give their decision as to which way or some third way that it should be advanced.

Q. And then would it be referred back again?

A. Back to the Joint Executive Committee to proceed according to instructions, yes, sir.

Q. So as far as this survey that you refer to that the Canadian Pacific has started is concerned, you say it started about a year ago?

A. Yes, sir.

Q. And there has been no report in respect of that?

A. Oh, yes.

Q. There has been a report?

A. Yes. The survey is continuing and we are getting the progress reports as it develops.

It takes quite a while for our local officers, who are still very busy, to investigate the various propositions and report upon them, not as Joint Local Committee reports, but what they consider to be within the three categories specified that they were investigating.

Q. As a result of that survey that you made, Mr. Armstrong, are there any new projects that have been referred to the Co-operative Committee?

A. I think I have already made a statement on that, Mr. MacPherson. My statement was, so far this survey has disclosed no further opportunities for substantial co-operative economies.

Q. So there have been no new projects developed as a result of your survey?

A. No, sir.

MR. MACPHERSON: I do not think there is anything else I have to ask.

CROSS-EXAMINED BY MR. FRAWLEY:

Q. Mr. Armstrong, I could not help but be interested in what you were telling Mr. MacPherson as to the length of time it took you to conclude the joint operation between Alix and Nevis in Alberta. You say that there was an approval of a kind as early as 1945, but it was not finally made effective until 1948?

A. Yes, sir.

Q. That is thirteen years?

A. Yes, sir.

Q. Now, that is only 9-1/2 miles of a secondary branch line, isn't it?

A. Yes, sir.

Q. It just happens that the Canadian National has a line from Alix to Nevis with one whistle stop in

between called Troon, and the Canadian Pacific has a line a very few miles away from Alix to Nevis with no intervening stop at all. That looks to me like the situation on the map. Do your notes support that?

A. I think it hardly reaches the stage of being a few miles away. The lines are quite adjacent.

Q. Yes. Now, might I call that one at least of the more simple projects? That might be called one of the more simple projects.

A. It would seem so on the face of it.

Q. It is not fair, then, to judge the probabilities of bringing successful co-operation about by the thirteen years it took to get to the joint operation of that 9-1/2 miles?

A. The surprising thing, Mr. Frawley, is that some of the most obvious seeming co-operative projects, some that seem the most simple, become the most complicated when you get into them, and those that seem the most complicated are sometimes the most simple when you get into them. There is just no foretelling.

Q. I don't want to be too lighthearted about it -- big problems between Alix and Nevis out on the prairie there -- there were, were there? I mean, I would not have thought there was much problem there.

A. Well, I do not know just how to answer that. It took the matters before the Board eight years of that time to clear it.

Q. The war years were in there, were they?

A. Yes, sir.

Q. But you say it was eight years in the Board waiting for approval?

A. No, there were successive orders. The first B.T.C. order was dated July 2, 1940, which approved the

abandonment, and the abandonment did not become effective until October 18, 1948, eleven days ahead of the approval of the Board of that operation, because their order approving it was October 29, 1948.

Q. I do not think it really important enough for us to be taking all the time we are taking discussing it, except as a means of finding out if it is at all an illustration of the difficulties which beset the operation of this Act?

A. Yes, sir.

Q. Would you say it is?

A. Yes, sir.

Q. And, just thinking over your experience with this statute, can you think of any simpler thing than to arrange a joint operation of that 9-1/2 miles, with nothing in between the two terminals, if you could really dignify them by the name of terminals?

A. It certainly seems most simple.

Q. I would think it was the ultimate in simplicity, and it took thirteen years to go through. Now, Mr. Armstrong, there is something I would like to call your attention to on page 137, it is the very last item on the page, item 13:

"Edmonton & Calgary to Vancouver, B.C.

Extension of co-operative agreement for handling westbound grain to Kamloops to include freight traffic. Vancouver to be made interchange point." Now, that must be looked at along with the item on page 133, item 9 of that group, which is called:

"Calgary-Edmonton, Alta.-Kamloops, B.C., C.N. grain traffic originating in Calgary district hauled to Kamloops by C.P., and C.P. grain traffic originating in Edmonton district hauled to Kamloops

by C.N., effective November 13, 1933."

A saving there of \$60,000 a year. Now, would you mind just in your own words, Mr. Armstrong, relating those two items? They are related in a sense, are they not?

A. In a sense, yes, sir.

Q. Would you tell us first briefly, about item 9 on page 135, just what that arrangement is, just the highlights of it, for the Commission's information?

THE CHAIRMAN: Which page is that?

MR. FRAWLEY: Page 133, the one that is in effect now.

THE WITNESS: Isn't that the second item on page 133? I do not understand the No. 9.

MR. FRAWLEY: Q. No; I started with the items beginning on page 132. My numbering was not correct. It is the second item on page 133.

A. Which do you want me to start with Mr. Frawley?

Q. That second item; if you would just briefly describe that operation?

A. There are two matters concerned there. That first item that is in effect was an arrangement whereby grain originating on the Canadian Pacific north of a certain point or line was sent north to Edmonton and taken from Edmonton to Kamloops by the Canadian National, as I understand it, under Canadian Pacific billing.

Q. That is only grain?

A. Grain. In the same way Canadian National grain originating south of that line or point was taken south to Calgary and taken west from Calgary over the Canadian Pacific to Kamloops under Canadian National billing.

Q. It is not only the Province of Alberta; I suppose that the line extended over into the grain production areas in Saskatchewan as well, did it, so long as this

was in what we call the Vancouver terminal shed, the Vancouver terminal district?

A. I do not recall the eastern limit of that, if there was any eastern limit.

Q. I don't know, but it might be the limit of the area which freight rate wise would ordinarily move to the west coast terminals?

A. It might have been.

THE CHAIRMAN: Is this an arrangement you are talking about, Mr. Frawley, that is now in effect?

MR. FRAWLEY: Yes, now in effect, my lord.

THE CHAIRMAN: Well, tell me what it is. I do not quite understand it. What grain does it affect? Originating where?

MR. FRAWLEY: Originating north of a certain line in the Province of Alberta, and extending perhaps over into Saskatchewan, which might be called naturally tributary to Edmonton, which is on the main line --

THE CHAIRMAN: When you say "line", you mean just a line drawn across the map?

MR. FRAWLEY: Yes, just a line drawn across the map. I was going to ask Mr. Armstrong if he could particularize. You have not got many lines of railway in the northern part of Alberta.

Q. Would it include your Hardisty subdivision? Would it go that far south?

THE CHAIRMAN: That is a territory which is now tributary to Edmonton?

MR. FRAWLEY: Yes, Canadian Pacific lines, where the grain is turned over to the Canadian National.

THE CHAIRMAN: Excuse me. I must ask you again: the imaginary line that you have just drawn is south of Edmonton?

MR. FRAWLEY: It is south of Edmonton and north of Calgary.

THE WITNESS: I will try to get that information.

THE CHAIRMAN: Does it mean, then, that grain originating north of that line goes north to Edmonton and then out to the coast from Edmonton?

MR. FRAWLEY: On the Canadian National lines.

THE CHAIRMAN: And grain originating south of that line goes south to Calgary and then out on the Canadian Pacific?

MR. FRAWLEY: Yes, on Canadian Pacific lines. If it originates on Canadian National lines south of that line, then instead of being hauled up to Edmonton to go on the Canadian National it is turned over to the Canadian Pacific and it goes west on the Canadian Pacific's main line.

THE CHAIRMAN: Now, suppose it originates north of that line at a Canadian Pacific point, does it go north to Edmonton and then out?

MR. FRAWLEY: Yes, if it originates north of this line on a Canadian Pacific line, it is considered to be, as it were, in Canadian National territory, and it is turned over to the Canadian National.

THE CHAIRMAN: At Edmonton?

MR. FRAWLEY: Q. It is turned over at Edmonton, I take it?

A. Yes.

Q. You people take it as far as Edmonton, and the interchange is at Edmonton?

THE CHAIRMAN: Q. And the reciprocal turn-over is at Calgary?

A. Yes, sir.

MR. FRAWLEY: Q. Now, could you give us an idea where that line is?

A. The proposal as cited in the Joint Co-operative Committee report to the Joint Executive Committee reads, that grain traffic to Vancouver originating at Canadian National stations that are closer to Calgary be turned over to the Canadian Pacific at Calgary to be hauled to Vancouver and delivered there, and that grain traffic for Vancouver originating at Canadian Pacific stations that are closer to Edmonton be handed to the Canadian National at Edmonton to be hauled to Vancouver and delivered there.

THE CHAIRMAN: These words "closer to" is the line that you have in mind?

MR. FRAWLEY: Yes.

THE WITNESS: Yes; my recollection was that it was a specified point or series of points that would constitute a line, but this is the general statement of "closer to Calgary."

THE CHAIRMAN: Q. Excuse me for interrupting you all the time, but in order to make it clear, can we take it for granted that all wheat originating north of Edmonton goes to Edmonton and then out over the Canadian National to the coast?

MR. FRAWLEY: With one important exception that I am going to develop with Mr. Armstrong, and that is the Northern Alberta Railways.

THE CHAIRMAN: I see.

MR. FRAWLEY: Now, Red Deer just happens to be almost midway between Calgary and Edmonton, Mr. Armstrong, isn't it?

A. Yes, sir.

Q. So that I suppose roughly for the purpose of our discussion we could say that Red Deer would be about that

line?

A. I suppose so.

Q. And the Canadian Pacific grain grown on Canadian Pacific lines north of Red Deer is taken to Edmonton and turned over to the Canadian National, and grain grown on Canadian National lines south of Red Deer is taken over to the Canadian Pacific at Calgary. Now, that is the going arrangement now?

A. Yes, sir.

Q. It is quite a satisfactory one, I take it?

A. It was not developed on the basis of going through to Vancouver.

THE CHAIRMAN: Q. I beg your pardon?

A. It was not developed on the basis of hauling the grain through to Vancouver. It was developed on the basis stated in the C.P. submission, that it is interchanged back to its own line at Kamloops. The interchange at Kamloops happens to be very handy between the two railways.

Q. What interchange occurs at Kamloops, then, concerning this grain?

A. I beg your pardon?

Q. What interchange occurs at Kamloops?

A. The Canadian Pacific grain that has been hauled from Edmonton to Kamloops by Canadian National is turned back to the Canadian Pacific at Kamloops.

MR. FRAWLEY: Q. So really it was a slip of the tongue when I said through to Vancouver. It goes through to Kamloops, then goes back to its original --

A. The original proposal here to the Joint Executive Committee was that it go through to Vancouver. I read Vancouver also, because that was the original proposal.

THE CHAIRMAN: This is the time when we must

take a recess.

RECESS

MR. FRAWLEY: When we adjourned you were just telling us about this grain interchange, and you said that it was originally developed to be carried through to Vancouver?

A. That was.

THE CHAIRMAN: Pardon me a moment. Instead of Kamloops?

MR. FRAWLEY: Yes, instead of Kamloops.

Mr. Armstrong will tell us about that. It was originally thought of to go through to Vancouver.

THE WITNESS: The report of the Joint Co-operative Committee to the Joint Executive Committee set up as the proposal that grain traffic to Vancouver originating at Canadian National stations that are closer to Calgary be turned over to the Canadian Pacific at Calgary and be hauled to Vancouver for delivery there, and the same for the Edmonton C.N. movement of C.P. grain.

THE CHAIRMAN: Q. Is that the present situation?

A. No, sir; that is the report of the Joint Co-operative Committee to the Joint Executive Committee.

Q. What next, then?

A. That report was approved and referred back to the Joint Co-operative Committee to develop the facts, detail facts, for the preparation of an agreement. In studying the detail situation it was found that it was a very handy interchange at Kamloops, a very easy place for the C.P.R. cars of grain to be turned over from the Canadian National to the Canadian Pacific, and vice versa, Canadian National cars of grain to be turned over from

the Canadian Pacific to the Canadian National.

Q. Instead of waiting till they got to Vancouver?

A. At Kamloops, yes, sir. And, while at Vancouver the interchange would be much more difficult, much more a matter of delay and what not, the agreement as finally developed was on the basis of interchange at Kamloops.

Then the next step beyond that was the suggestion that all freight, not only grain but all freight, be turned over from the C.P. to the C.N. at Edmonton, or the C.N. to the C.P. at Calgary, in the same way as the grain. The local investigation of that resulted in a recommendation against that, for detail reasons that I frankly do not recall at the moment, so that that was left just the grain to be handled in that way. Then the matter of carrying the grain through from Kamloops to Vancouver was studied to see if there was greater economy in that than interchanging at Kamloops. It was decided that there was a loss in economy to carry it through to Vancouver.

Q. That is, the point is, there had to be an interchange either at Kamloops or Vancouver?

A. Yes, sir.

Q. And it was more economical to do it at Kamloops?

A. Yes, sir.

MR. FRAWLEY: Q: Mr. Armstrong, let me ask you about that. If it was all export grain it would be all destined to the terminals there in Vancouver, but some of them I suppose were on Canadian Pacific tracks and some of those terminals are on Canadian National tracks, and that is why it would have to be interchanged at Vancouver

A. Yes, sir.

Q. Otherwise, being on C. N. R. tracks, it would all be run into x Canadian National terminals, and the Canadian Pacific terminals would of course be empty, to be extravagant about it, so there has to be an interchange at some point, either at Kamloops or Vancouver?

A. It has to get back to the home road somewhere.

Q. And that is the present situation?

A. Yes, sir.

Q. Now, what, roughly, very roughly, of the \$60,000 a year --

A. That was estimated on the basis --

THE CHAIRMAN: What is that?

MR. FRAWLEY: Q. Of the \$60,000 called the estimated annual joint economy. I am reading from page 133.

THE WITNESS: That estimate was based on an assumed estimate, if you choose, 6,000 cars per annum at a saving of \$10 per car.

MR. FRAWLEY: Q. Ten dollars per car, and that is to each; the Canadian National would save \$10 per car by turning over their south grain to the Canadian Pacific, and the Canadian Pacific would save \$10 a car by turning over their north grain to the Canadian National. That is pretty much of a horseback figure, I suppose?

A. Very much so, because the six thousand is not a guaranteed figure, and the \$10 is not a guaranteed figure.

Q. It would be easier to determine the number of

cars, perhaps, than the \$10. Could I pursue that with you helpfully, Mr. Armstrong, that \$10, how that would be arrived at?

A. I am afraid I cannot go very far with you on that, Mr. Frawley. That was, I assume -- and I can only assume -- an estimate by the local traffic people of the perhaps average haul total from point of origin to Kamloops via Calgary and via Edmonton, and developing that on the different mileage and what not to develop a figure of \$10, but I have no means of asserting that it is six thousand cars in any one year or even that it averages six thousand cars over a period of years.

Q. Tell me, now, what do they do? You are still using an estimate figure, although that arrangement has actually been in force since 1933?

A. Yes, sir.

Q. Well, now, in all those years do you not know in the case of the Canadian Pacific what you are saving by turning over the north grain to the Canadian National?

A. I do not know, no, sir.

Q. I did not mean on an estimated basis, but at the end of the year, looking back over the year, you do not make any figure?

A. I do not, no, sir.

Q. Of course, ratewise it does not make any difference, does it?

A. No, sir.

Q. That is perhaps why there is not too much concern about how much money is actually saved. I mean, it does not make any difference on the revenue side. Now, the question is whether it does make saving on the expense side, and somebody has estimated that it does make a \$60,000 difference?

A. I think it is obvious that when you cut out car miles hauled you are making a saving, and to cross-haul Canadian National grain say from the back door of Calgary up to Edmonton, and to haul Canadian Pacific grain from the back door of Edmonton down to Calgary for forwarding, there obviously is a saving in car miles hauled, if you split it somewhere in the middle.

Q. Yes. So that, as you say, to the various laymen that just seems sensible, that it costs money to haul a car of grain originating on the Canadian Pacific away up there in North Edmonton, say, to haul that through Edmonton down to Calgary and then send it over the Kicking Horse -- that sounds like spending a lot of money unnecessarily, so you just carry it a few miles and turn it over to the Canadian National at Edmonton. Now, that being so, I wonder why there has been such a delay in the further proposal which is referred to at the bottom of page 167, extending that arrangement to, as you say, all freight traffic. If it is not telling the railways how to run their business, why would they not have taken one more item first -- take livestock, a lot of livestock moves to the coast from Alberta, to the packing plants in Vancouver; that is right, isn't it -- hogs, at least?

A. There certainly is freight hauled that way. I cannot say what the freight is.

Q. Livestock freight, I mean?

A. I don't know. That is a thing as to which I have no original information.

Q. Well, assume with me that there is a good deal of livestock --

THE CHAIRMAN: Before we proceed, Mr. Frawley, the words here are, the extension of co-operative agreement

for handling west-bound grain to Kamloops to include freight traffic. Does that mean all freight?

MR. FRAWLEY: That is what Mr. Armstrong has told us, all freight traffic.

THE CHAIRMAN: The word "all" should be there.

MR. FRAWLEY: Really, I suppose the word "all" should be there.

THE WITNESS: That is the intent. It is freight traffic, not grain traffic.

MR. FRAWLEY: Q. Everything except grain, grain being already taken care of?

A. Yes.

Q. Well, I was proceeding to discuss it by commodities, not all, but I want to discuss with you two primary commodities that originate in Alberta and move to the coast. Livestock first of all. Has that matter separately come before this committee, to consider whether or not the situation with respect to grain could be duplicated with regard to livestock?

A. That is before this committee at the present time.

Q. Livestock or - -

A. All freight traffic.

Q. This proposal at the bottom of page 137?

A. These were projects which were under study.

Q. All freight traffic?

A. Yes, sir. That item at the bottom of page 137 is under the general heading "Projects on which Study was interrupted owing to war activities."

Q. And you told us that this fell down locally, because when it was being studied locally it ran into

some difficulty?

A. I think that is one of the reports on which we have had an adverse report from the Joint Local Committee, with which the Joint Co-operative Committee is not yet satisfied, and is going back after further information.

Q. What do you call the Joint Local Committee?

A. That is the committee set up of local officers who are conversant with immediate conditions under consideration.

Q. When you say local, you mean local to the Canadian Pacific?

A. Local to the territory.

Q. Local to the territory?

A. As it is a joint Local Committee, it has both Canadian Pacific and Canadian National officers on it to study the exact situation we are talking about.

Q. What would be the make-up of the Joint Local Committee? Studying this Alberta-to-Vancouver traffic movement

A. I only guess, but I would assume there would be a traffic man on it, an operating man of that division, a division officer.

Q. Western lines, perhaps even the Alberta district?

A. It would probably be the Edmonton division.

Q. And you say that they have discussed all freight traffic as one study, or they have broken it down into primary commodities?

A. The assignment was all freight traffic.

Q. But I suppose it would be studied separately, naturally?

A. That would be a matter of local convenience, I assume.

Q. I suppose it is hardly right to ask you to venture an opinion, but do you find it very difficult to agree with my suggestion, that if it is working all right with grain, it really should work all right with another primary product, namely, livestock?

A. If my understanding is correct -- and I think it is -- that the Joint Local Committee has reported adversely on that, and that the Joint Co-Operative Committee has sent it back for further study because they do not believe that, then I must agree that there must be some semblance of reason in it.

Q. Things must be pointing in the right direction, then, as to that.

A. I think they are.

Q. Now, going immediately to another matter, which is somewhat akin to that, the Northern Alberta Railways is owned jointly by the Canadian Pacific and the Canadian National?

A. Yes, sir.

Q. And traffic comes off the Northern Alberta Railways -- lumber, lots of lumber, lots of grain, lots of livestock, just to deal with primary production. What happens that grain that is destined to Vancouver? First let me put it to you, because of the freight rate situation all the grain off the Northern Alberta is normally to the Vancouver terminals, isn't it?

A. I do not know.

Q. I mean, rather than to lake terminals?

A. I cannot answer. I would have to assume. That is a thing that I do not know.

Q. Well, probably Mr. Spence would -- well, just assume with me that it is --

A. The Chief Engineer does not know all these things,

unfortunately.

Q. That is true. Now, Mr. Armstrong, assume with me that the grain off the Northern Alberta would normally go to Vancouver, because of the freight rates being more advantageous than the freight rate to the lake head; what happens to the grain that comes off the Northern Alberta, in a word?

A. I can only speak from -- let me start off by saying I do not know; that is the honest, complete answer, but if I were to speak from what I believe to be the case -- and I am not prepared to assert it -- it is my understanding that the traffic that comes off the Northern Alberta Railways would divide 50-50 between the Canadian Pacific and the Canadian National.

Q. By agreement?

A. I think perhaps somebody on the Canadian National is in a better position than I am to confirm that, because, after all, I am only an engineer.

Q. I think that is exactly so, isn't it, Mr. Fairweather?

MR. FAIRWEATHER: It is so with regard to competitive traffic.

MR. FRAWLEY: Q. With regard to competitive traffic

A. Yes.

Q. Then the next question is whether grain is competitive traffic. Does that present a problem to you, Mr. Armstrong?

A. I wouldn't know.

Q. It is a problem, then. Assume again, then, with me, that grain would ordinarily go to Vancouver. Now, is this the situation? I want to point out what looks to me like an inconsistency. We have many Canadian National points in the northern part of the province. Take any one

at all. Take Andrew, for instance ---

THE CHAIRMAN: Are you talking of north of Edmonton?

MR. FRAWLEY: At the moment I am talking of north of Red Deer, but I am getting closer to Edmonton. I am taking the immediate Edmonton district. Take a place like St. Michael, for instance, on the Willingdon subdivision, quite close to Edmonton. That is correct, isn't it?

THE CHAIRMAN: South of Edmonton?

MR. FRAWLEY: Q. Just a little east of Edmonton, isn't it?

A. I do not happen to know that station, but I would take your word for it.

Q. Well, I am looking at a reliable document called the Canadian Pacific Western Lines. Now, that grain would be turned over to the Canadian National at Edmonton for furtherance to Kamloops?

A. So I would understand, yes, sir.

Q. Under the agreement we are talking about?

A. So I would understand.

Q. Now we go to the Northern Alberta Railway, and we go up to any station at all just a few miles -- take a point the exact same number of miles from Edmonton, a place like Bon Accord. Now, if that grain belonged to your fifty percent, would that be turned over to the Canadian National for furtherance to Kamloops like the grain from St. Michael, or would that be treated differently?

A. I could only go - -

THE CHAIRMAN: Do you mean, go to Calgary?

MR. FRAWLEY: Go to Calgary, and by the Kicking Horse.

THE WITNESS: I could only give my interpretation of what I think it probably would be, because I do not know what it would be. I am not a traffic man; I do not know what the details of the arrangement are, but I expect that that grain would become Canadian Pacific grain at Edmonton and would fall under that arrangement.

THE CHAIRMAN: Q. Go to Calgary?

A. No sir: would fall under the arrangement of being turned over to Canadian National at Edmonton.

MR. FRAWLEY: Q. For furtherence in Kamloops?

A. Yes, sir.

Q. That would, then, apply to all of the 50% of your grain coming off the Northern Alberta Railways.

A. I would expect so, though I do not know.

Q. On that assumption - and of course it is pretty important, that assumption

MR. SPENCE: Well, I do not know that we can say ---

MR. FRAWLEY: That is in accord with what I would submit to the Commission, you see.

THE WITNESS: Please understand that I am only making assumptions, because I am not a traffic man, and know nothing of the traffic arrangements.

MR. FRAWLEY: Q. Let me put the other proposition to you. Suppose that it was not that, if I may say so,³ perfectly sensible arrangement; suppose it was not, and it was turned over at Edmonton to the Canadian Pacific and you hauled it to Calgary and then sent it over the Kicking Horse Pass to Vancouver, it would cost a lot of extra money as compared with turning it over to the Canadian National at Edmonton.

A. I would think so, yes, sir.

Q. Now, it is late in the day --- it is late not only in the day but in the affairs of this Commission, and I would simply leave it, my lord, that my friend Mr. Spence would inform the Commission as to whether that arrangement is so, because there is a wide divergence, and if that grain is handled as Mr. Armstrong says it is handled off the Canadian National, off the Northern Alberta Railways, then in my respectful submission, that is just as it should be from the standpoint of this Canadian National - Canadian Pacific Act; but if it not, then of course that is another matter. Then we go from grain to livestock; there is a good deal of livestock that comes off the Northern Alberta, destined in part at least to Vancouver. As far as you know, then, the same situation - no, that is not grain, so then as far as the livestock is concerned coming off the Northern Alberta, at the moment that is hauled to Calgary and sent over your main line from Calgary to Vancouver - livestock.

A. As far as I know, but I would not know if it were not. That is a matter in which I have no concern whatever and no knowledge.

Q. And the same thing with regard to livestock grown on that Willingdon subdivision, which is a Canadian Pacific line, and destined at Vancouver; you say, there, being only this interchange/^{arrangement} with grain, then that livestock would be hauled to Calgary and sent over your main line to Vancouver; definitely at the moment that is the situation.

A. That is your assertion and not mine. All I can say is that I don't know.

Q. I thought you would know, because it is not grain. The only project you have here, the only co-operative project, has to do with grain.

A. I know that there is an agreement to haul grain in that way.

Q. That is true.

A. I do know the hauling of other freight is under study.

Q. Only under-study?

A. Only under-study;.. only under study, and what local arrangements may be I have no idea.

Q. Oh well, that is something I did not know. Might there be some arrangement outside of what has been accomplished under the C.P. - C.N.R.

A. There might be for all I know.

MR. FRATLEY: Do you know about that, Mr. Spence? Is there any such thing?

MR. SPENCE: No, I do not know. I can make inquiries, but I suggest Mr. Armstrong says he does not know, and I do not think we can go on making assumptions as to how the traffic moves until we find out the actual facts.

MR. FRATLEY: That is true.

MR. SPENCE: I will be perfectly glad to obtain the information, and I will have it here on Monday and let you know.

MR. FRATLEY: That is fine, Mr. Spence. Mr. Covert told us that the witness would be required to answer these questions, and I am certainly putting no blame on the witness in the box now - certainly not - he could not say any more than that - but I think that is important to know.

Q. I only want to ask you now, Mr. Armstrong, about the proposal of the Canadian Federation of Agriculture and what you think about that. I am reading from page 7536. It is proposed:

"Through amendment to the Canadian National-Canadian Pacific Act, the immediate appointment of a continuing tribunal which would be given authority to undertake research and investigate all possible ways to reduce duplication of services and wasteful competitive practices; such tribunal to propose from time to time to the railway companies such measures as the findings of their research show would be fruitful in effecting economies; and that the tribunal report each year to parliament recommendations which they have made and the extent to which these have been adopted and carried out by the railways;" Do you think that that would be useful either ^{as} substitution or addition, substitution for or addition to the existing legislation.

A. I have not given that matter any study whatever. I only heard of it this morning for the first time, and I have no opinion that merits expression at this time.

Q. This proposal was not submitted to you for consideration before you gave evidence.

A. No, sir.

Q. Well, perhaps you would not mind - I don't want to press you to give an offhand opinion unless you feel like doing it, Mr. Armstrong, but suppose that the tribunal were just a branch of the Board of Transport Commissioners and they were given ~~an~~ authority to undertake a research on their own and an investigation on their own to see what ways ~~there~~ might be found to reduce duplication of services and wasteful competitive practices. Now, just so far there would be no harm in that at all.

A. I do not know. That would depend, in my opinion, entirely on how the matter was handled. I have already expressed the opinion that force and co-operation seem to me to be impossible bedfellows.

Q. That is right.

A. If that is a matter of force, then I think it is an impossible pair of bedfellows.

Q. Yes, Mr. Armstrong, but I was not taking it step by step. At the moment I am only asking you your view on the proposal to amend the statute to give a continuing tribunal - that is, the Board of Transport Commissioners or one specially set up; let us assume for simplicity's sake it would be given to the Transport Board - to undertake research and to investigate all possible ways to reduce duplication of services and wasteful competitive practices. Now, if that is all the power was, you would not find any harm in that.

A. I do not know. I would have to think about it.

Q. Well, now, what do you think at the moment might be an objection to that.

A. I would prefer to think before I said what was in favour of it or what was against it.

Q. It is bringing in a detached point of view, isn't it? It is bringing in a point of view outside of the railway company. Now, at the moment, is that good or bad, would you say? Just think a bit, now.

A. I do not think I would care to express an opinion, Mr. Frawley. One can give snap judgments on these things and it could be utterly wrong.

Q. That is true. I think it really would be hardly fair to present the second half of the proposal. That tribunal, would you have the right to propose its findings, the findings of its research, to the railway companies, with the suggestion that their suggestions be acted upon? I suppose you would give me the same answer to that.

A. I am afraid I would have to.

Q. Well, it is regrettable, because I personally would value your considered opinion about this suggestion of the Canadian Federation of Agriculture.

A. Mr. Frawley, if I had a considered opinion I would be glad to give it.

Q. That is what I mean. All I regret is that through no fault of your own, I am sure, you were not asked by your people to think about that and be prepared to give us the benefit of your views. And now, looking at the statutes again, and trying to get at the meaning of these words in Section 16, in which section Parliament directed the railways to attempt forthwith to agree and continuously to endeavour to agree, -do you regard yourselves,

as being under a statutory obligation continuously to endeavour to agree on these matters which you say are still uncompleted projects.

A. Yes, sir.

Q. For instance, taking one matter that occurs to me, the terminal situation in Sudbury, where the Canadian National is very much the junior railway, and its terminals are away over in one end of the city, and the Canadian Pacific has the old established road that was there before the city and is therefore in the centre of the city -do you regard yourselves as under the statutory obligation to continue to find ways of bringing those Canadian National terminals into the Canadian Pacific terminals.

A. If there is economy in it yes, sir.

Q. Well, always if there is economy in it.

THE CHAIRMAN: Q. If what?

A. If there is economy in it.

MR. FRAWLEY: Q. Before we get to the economy of it, just thinking of what the statute says, you are

directed to agree, forthwith to agree, and continuously to endeavour to agree, so that you have the statutory obligation, then, I take it, continuously to endeavour to agree about it?

THE CHAIRMAN: Agree to what?

MR. FRAWLEY: Q. To agree to what?

THE CHAIRMAN: What does the statute say?

THE WITNESS: What does the statute say?

MR. FRAWLEY: "to agree, upon such ~~as~~ co-operative measures, plans and arrangements as are fair and reasonable and best adapted (with due regard to equitable distribution of burden and advantage as between them) to effect such purposes."

THE CHAIRMAN: What purposes?

MR. FRAWLEY: The purposes being - well, one must look carefully at this section.

COMMISSIONER ANGUS: Effecting economies.

MR. FRAWLEY: Are of effecting economies, yes, thank you, Dr. Angus - of effecting economies and providing for a more remunerative operation. It is a little troublesome, and perhaps these things can be better understood in the light of some concrete illustration, and perhaps the situation of the terminals at Sudbury is as good as any other case.

Q. What do you regard as your statutory obligation there, if any.

A. If there were a possibility of securing economy by making a joint terminal there, I would say that we would be bound to study it.

Q. Then I am troubled to know just which comes first. You must first come to some conclusion as to whether there is a measure or a plan there to effect economies.

A. Mr. Frawley, perhaps I can ease your mind by

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saying this: I think perhaps you will agree with me that it would not be an economy for the Canadian Pacific to tear up its terminal and go over to the National terminal.

Q. I would say that right away.

THE CHAIRMAN: Q. To what.?

A. To tear up the Canadian Pacific terminal and divert all Canadian Pacific trains over to the Canadian National terminal. I think that obviously would be uneconomical. It requires no study to see that it would be uneconomical.

MR. FRAWLEY: Yes, anybody who has ever been in Sudbury would agree with that.

THE WITNESS: I think so, I think so. Then., secondly, since early in the war our Sudbury terminal has been so badly congested we cannot handle our own business in it, and there is no opportunity for enlargement there that we have discovered, and we have been studying it for years. Now, in order to bring the Canadian National in there we have got to enlarge the terminal. We have got to enlarge it for our own purposes alone, and we do not know how to, so I do not visualize any economy resulting from bringing the Canadian National into a badly congested terminal now.

Q. Allright, that is a good example. Then you say, because of what you have just told us, then the statutory obligation if there is one lifts.

A. Yes sir.

Q. Disappears.

A. Because there is obviously no economy.

THE CHAIRMAN: Well, it is time to adjourn.

-- The Commission adjourned at 4:10 p.m., to meet again at 10:30 a.m. on Monday, May 1, 1950.

AIR.

Chairs
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
Monday,
May 1, 1950.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER.

- - - - -
G. R. Hunter,
Secretary.
- - - - -

COUNSEL APPEARING:

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H. C. Friel, K.C.		
K. D. M. Spence)	Canadian Pacific Railway
J. J. Frawley, K.C.)	Province of Alberta
J. Paul Barry)	Province of New Brunswick
C. D. Shepard)	Province of Manitoba.
M. A. MacPherson, K.C.)	Province of Saskatchewan
C. W. Brazier,)	Province of British Columbia
F. R. Hume,	}	Canadian Automotive Trans- portation Association.
M. L. Rapoport,		

- - - - -

MORNING SESSION

THE CHAIRMAN: Yes, Mr. Spence.

MR. SPENCE: My lord, on Friday two or three questions arose/^{on} which I said I would make some inquiry and let the Commission know our views and position. The first question, as to what was meant by unification, and that was discussed at pages 21036 to 21038. I think perhaps I should like to say just briefly that the proposal for unification that was advanced by the Canadian Pacific in 1938 was that the railway properties of the two companies would be operated as a single system under one management, the management to consist of something in the nature of a Board of Directors appointed by the two companies. The two companies would retain their identity but they would turn over their railway properties to this joint management to operate. Essentially the purpose was really complete co-operation by the elimination of the factor of competition. The Canadian Pacific of course is not advocating that procedure at the present moment. The Canadian Pacific is opposed to that proposal now.

The second question was a matter that arose at page 21117 of the transcript relating to co-operation in the handling of grain via Edmonton and Calgary. I have made some inquiries and I find that grain from the Northern Alberta Railways is considered to be included under the co-operative agreement; so that if it is delivered to the Canadian Pacific at Edmonton from the Northern Alberta Railways, it is subject to transfer to the Canadian National for forwarding to Kamloops under the co-operative agreement.

THE CHAIRMAN: Would you say that again, please? If it comes down from --

MR. SPENCE: If it comes down from the Northern Alberta Railways and is handed to the Canadian Pacific at

Edmonton --

THE CHAIRMAN: In what cases is it handed to the Canadian Pacific at Edmonton?

MR. SPENCE: If it is routed via Canadian Pacific. An endeavour is made by the Northern Alberta Railways to divide the traffic on a fair and equal basis.

THE CHAIRMAN: Yes, I see.

MR. SPENCE: The grain traffic that originates on the Northern Alberta route via the Canadian Pacific, when it arrives at Edmonton is considered by the Canadian Pacific to be subject to this general co-operative agreement, if it is going to the Pacific coast.

THE CHAIRMAN: And then it goes down to Calgary?

MR. SPENCE: No. It would normally be handed to the Canadian National at Edmonton to take the short route under the agreement.

THE CHAIRMAN: Does that mean that none of it at all goes down all the way to Calgary and then West?

MR. SPENCE: In actual fact, some of it does, yes; because occasionally the agreement gets out of balance because the Canadian National is unable to transfer enough cars to the Canadian Pacific at Calgary.

THE CHAIRMAN: Did you say at Calgary?

MR. SPENCE: Yes, at Calgary. The Canadian National originating cars in the vicinity of Calgary routes them to the Canadian Pacific through Calgary to Kamloops; but the Canadian National is at times not able to originate enough cars in that district and turn them over to the Canadian Pacific at Calgary, to balance the cars that the Canadian Pacific has turned over to the Canadian National at Edmonton. It is on a car for car basis. For that reason it is sometimes necessary for the Canadian Pacific cars received from the Northern Alberta Railways at Edmonton to be

retained by Canadian Pacific and routed via their own line.

THE CHAIRMAN: Through Calgary?

MR. SPENCE: Through Calgary; yes, my lord.

There was another question involved there. My friend Mr. Frawley asked then whether there were any local arrangements put into effect in respect of other freight at Calgary and Edmonton. I am informed that there are no such local arrangements, that the only co-operative arrangements are in respect of grain at the present time.

At page 118, and the following pages of the transcript, Mr. Armstrong was asked by Mr. Frawley as to his views on the Canadian Federation of Agriculture proposal, and at that time Mr. Armstrong was reluctant to express an opinion without more study of the matter.

THE CHAIRMAN: Which proposal was that?

MR. SPENCE: The proposal of the Canadian Federation of Agriculture that there should be a new permanent tribunal to inquire into the possibility of co-operative measures, to recommend them to the railways and to make reports to Parliament. Mr. Armstrong has looked into that matter more fully now; and perhaps if Mr. Frawley has no objection, Mr. Armstrong might commence by answering Mr. Frawley on that point.

THE CHAIRMAN: All right.

JOHN E. ARMSTRONG RECALLED

Cross Ex. continued by Mr. Frawley

Q. Yes, Mr. Armstrong. I had asked you on Friday for your views with regard to Dr. Hope's recommendation about the continuing tribunal, not necessarily a separate one, as I understand it, from the present regulatory body; but in any event, the advisability of the continuing tribunal being given special powers to undertake research in this matter and to communicate the results of that research to the railways.

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You have gone over what he has said?

A. Yes.

Q. And you have some views?

A. Yes.

Q. All right, Mr. Armstrong. Will you give them to us.

A. Over the week-end I have given study to the proposal contained in the Brief of the Canadian Federation of Agriculture set out at pages 7536 and 7537 of Volume 40 of the transcript. This proposal appears to be that the Canadian National-Canadian Pacific Act be amended to provide for a continuing tribunal whose duty it would be:

1. To undertake research and investigate all possible ways to reduce duplication of services and wasteful competitive practices by the two railways.
2. To suggest to the railway companies such measures as the tribunal might think would produce economies, and
3. To report each year to Parliament the suggestions it had made to the railways and the extent to which those suggestions had been adopted by the railways.

While the proposal of the Canadian Federation of Agriculture does not state in so many words that the railways are to be forced to adopt the measures that the tribunal suggests, it seems to me that the purpose of the proposal must be to force co-operative measures upon the railways.

As I have already stated, force and co-operation seem to me to be impossible bedfellows. I am therefore opposed to the proposal of the Canadian Federation of Agriculture.

The proposal of the Canadian Federation of Agriculture does not make it clear whether the present provisions for an arbitral tribunal are to be rescinded or whether there are to be two separate kinds of tribunals, one to make suggestions to the railways and report to Parliament, and the other to be

invoked in the case of dispute between the railways. However, whichever plan were adopted the new tribunal would exert pressure upon the railways in a different manner to that provided by the present Act. The pressure would come from the tribunal's reports to Parliament of the suggested measures that the railways had failed to put into effect. There might be, and no doubt would be, perfectly valid and legitimate reasons on the part of one or other railways, or both, for not voluntarily implementing measures suggested by the tribunal, but nevertheless, they might be compelled to adopt measures one or other of them considered to be damaging to its competitive position.

I am favourably disposed toward co-operation to the fullest extent to which it can be brought about without detriment to the competitive position of either railway. Insofar as any action might force the railways to go beyond this, I am opposed to such action, even though it be called co-operative, which, of course, would be a misnomer.

I think that both railways in their own interest are anxious to adopt every legitimate means to effect economies, and that when one railway cannot see its way clear to enter into a co-operative project the reason is either that it is satisfied there is no economy in that project or that the resultant detriment to its position outweighs such economy as there may be. To force a railway into such a so called co-operative measure is in reality depriving it to that extent of its right to carry on its own affairs in what it believes to be its own best interest and that of the people it serves..

No one can know better than the railway officials themselves where co-operative economies can be made and the possible dangers and drawbacks of many measures proposed in the name of co-operation. It seems unlikely that an outside body or tribunal, such as is suggested by the Canadian Federation

of Agriculture, could acquire such expert knowledge of a situation as to enable it to arrive at a useful conclusion as to whether or not a particular project should be implemented.

I have already described in some detail the machinery set up by the railways to study co-operative proposals. I am satisfied that the facts relevant to such a proposal must be developed by a joint committee of local officers of the railways in the territory affected by the proposal, that it is essential that these facts be appraised by system officers such as those comprising the Joint Co-operative Committee, and that the final decision as to whether or not a proposal should be implemented must rest with the Joint Executive Committee which is composed of directors of each of the two railways, including their respective Presidents.

It is my considered opinion that a decision arrived at by the operation of that machinery is much more apt to be a sound decision than one reached by a tribunal of the kind proposed by the Canadian Federation of Agriculture, which would have neither the information available to the officers of the railways for reaching a decision, nor the responsibility of those officers for the results of that decision.

Q. Mr. Armstrong, just to break up the recommendation or suggestions of the Canadian Federation of Agriculture, the annual report of the proposed tribunal to Parliament would not in itself offer any great objection to you, would it,

A. It would be the result of that report.

Q. The reason I call that matter to your attention is that section 14 now requires the Canadian National Trustees to make a report, and in that report they must do certain

things. I am only quoting the part that relates to this matter. That report must set forth:

"...any co-operative measures, plans or arrangements effected pursuant to this Act, any economies or more remunerative operation thereby produced...and such other information as appears to them to be of public interest or necessary for the information of Parliament with relation to any situation existing at the time of such report, or as may be required from time to time by the Governor in Council."

(page 21131 follows)

In so far as there might be what you term pressure applied to bring about the execution of plans upon which the railways had not agreed, do you not think that there is the same possibility of adverse pressure, as you might regard it, being applied pursuant to the terms of section 14, the report which the Canadian National must make under section 14?

A. No, sir.

Q. I take it that the Canadian National have faithfully made reports from time to time under their statutory duty?

A. I assume so.

Q. I dare say you, as a member of this committee, have seen those reports, have you?

A. From time to time, yes.

Q. And they have reported what much or little has been accomplished under the Act?

A. Yes, sir.

Q. And has there been an pressure in parliament criticizing the degree of accomplishment under this statute?

A. Mr. Frawley, as the proposal is made by the Canadian Federation of Agriculture I can conceive that in the first year, we will say -- these are arbitrary figures, pure and simple -- there might be twenty-five suggestions made by this independent tribunal which were not adopted by the railways. The following year there might be another twenty-five and they would report a total of fifty. In the course of several years there might be several hundred which would be actually impossible or very undesirable for implementation, and yet here is this long list of suggestions reported to parliament that have been made to the railways and not implemented by the railways,

Q. Well, they would only be undesirable because in the view of the railways they could not be implemented?

A. Economically.

Q. But they would first have been examined and investigated by the research staff of this tribunal before they were even recommended to the railways? That is inherent in this section that is proposed?

A. My thought is this independent tribunal could not possibly have all the facts that the railway managements have before them in making their decision, and as I said in my statement just now, it seems unlikely that an outside body or tribunal, such as is suggested by the Canadian Federation of Agriculture, could acquire such expert knowledge of a situation as to enable it to arrive at a useful conclusion as to whether or not a particular project should be implemented. There is a vast difference between suggesting and implementing.

Q. Well, Mr. Armstrong, do you not think in all fairness that is a rather defeatist attitude, that this tribunal could not have a research staff of advisers, who might intelligently approach the problem presented by this particular statute?

A. I think they could reach a perfectly sound conclusion as to what they were going to suggest. I do not think they could go beyond that.

Q. Would not the biggest part of their job be done by having reached a sound conclusion as to what should be done?

A. I do not think they could reach a conclusion as to what should be done.

Q. Under this new proposal of the Canadian Federation of Agriculture they would be required to seek out economies that might be made, study them, investigate

them and then recommend them to the railways. Inherently what is really wrong about that up to the point of suggesting them to railways at least?

A. Because in my opinion no such outside body could possibly get inside the brains of management and know the reason for management's conclusion.

Q. That is why I said a moment ago, and I say it in all fairness to your greater experience, that that sounds a little defeatist to me, that you do not think this Board could accumulate some engineering and technical brains? You do not think that is practically likely?

A. I think they are quite competent to get perfectly sound brains of the type you have referred to, but it seems to me that those brains could not at any time get inside the brains of management and know what management is driving at.

Q. At the moment, Mr. Armstrong, there is very little policing of this statute. I am using the word in its best sense, of course; there is very little, if any, policing of the two railways under the statute?

A. I think that is correct.

Q. And this suggestion of the Canadian Federation of Agriculture would at least constitute some policing of what the railways were doing under the statute?

A. It certainly would put more force into co-operation, and in my opinion the two cannot go together.

Q. In other words, you think if not one word of the statute were changed that would be a commendable situation? That is really the position you are taking?

A. The existing statute?

Q. Yes.

A. That is the position that the Canadian Pacific has taken right along, yes sir.

Q. I want to ask one more thing about grain from northern Alberta in the light of Mr. Spence's statement this morning. I think we did not make it clear enough on Friday, Mr. Armstrong, you and I -- perhaps myself more than you -- that there is a quantity agreement, as you might call it, between the railways with respect to the interchange of grain at Calgary and Edmonton respectively?

A. A car for car arrangement, yes, sir.

Q. That is the point. In other words, you build up a sort of pool, as it were, or you do some bookkeeping in any event about it?

A. Quite the contrary; there is no bookkeeping required other than to keep a record of the cars.

Q. That is true, but at least you have to do some bookkeeping about the number of cars?

A. Yes, sir.

Q. And in the nature of things, looking at the map of southern Alberta, the Canadian National really one only has one line of railway running from Saskatoon to Calgary, the line that is called the Goose Lake line?

A. I think that is correct.

Q. Then they have the Grand Trunk and Grand Trunk Pacific lines between Calgary and Edmonton in a rather roundabout way?

A. Yes.

Q. And we only regard that as south of Red Deer so that we have two Calgary-Edmonton branch lines south of Red Deer and the Goose Lake line from the border at Alsask into Calgary. That would be roughly the Canadian National mileage in southern Alberta?

A. I believe so.

Q. And if they build up fifty cars of grain on those

lines to be transferred to the Canadian Pacific at Calgary then the Canadian Pacific builds up fifty cars on its northern Alberta lines, its Calgary-Edmonton line north of Red Deer, its line from Wetaskiwin to Macklin, and its Willingdon branch line, all the branch lines that the Canadian Pacific has in the northern part of the province, they would build up fifty cars and turn them over to the Canadian National at Edmonton?

A. Yes.

Q. Than if in a given year fifty cars were all that the Canadian National could muster on its southern Alberta lines then you people would not have to turn over, or would not turn over to the Canadian National at Edmonton more than fifty cars of grain?

A. That is the principle of the agreement, yes, sir.

Q. Well, of course, when you take fifty per cent of northern Alberta your grain is fifty per cent of the number of cars that arrive at Edmonton, fifty per cent belong to the Canadian Pacific?

A. It may be.

Q. Well, I think roughly speaking that is right, that all traffic is divided roughly fifty-fifty between the companies.

MR. SPENCE: Yes.

MR. FRAWLEY: Q. Without trying to be absolutely meticulous about it, roughly fifty per cent of the grain that arrives in Edmonton belongs to the Canadian Pacific and fifty per cent to the Canadian National, and if you add to that fifty per cent all of the grain you grow on lines in northern Alberta it would surely outweigh the amount of grain which the Canadian National would get together on its Goose Lake line, and from Red Deer south to Calgary on the Calgary-Edmonton branch line?

A I believe it has consistently done so, yes, sir.

Q. So that means that the balance is mostly in favour of the Canadian Pacific. You know what I mean when I say the balance is in favour of the Canadian Pacific?

A. The Canadian Pacific is prepared to turn over more cars to the Canadian National at Edmonton.

Q. Yes, would be prepared to turn over --

A. Is in a position to be able to.

Q. But it is not required to do so because of the lesser number of cars which the Canadian National has ready to deliver to you at Calgary?

A. Yes.

Q. Then you only turn over the number of cars that the quantity agreement with the Canadian National requires you to?

A. Yes, sir.

Q. So that everything over and above the number of cars that you receive at Calgary from the Canadian National, everything over and above that in northern Alberta you haul down to Calgary and send over your main line to Vancouver?

A. I assume that that is the case. You understand why that is done?

Q. Well --

A. The reason for that is that it is a very simple matter to exchange car for car whereas the imbalance -- suppose the Canadian Pacific turned over to the Canadian National twice as many cars as the Canadian National turned over to the Canadian Pacific. Then there would be the difficulty of developing what the cost to the Canadian National was of handling these Canadian Pacific

care, and there would be terrific complications in working it out. The scheme now in effect was put in some time ago, and rather promptly because it was such a simple arrangement, and simplicity has its value.

Q. I merely want the Commissioners to be well aware of the effect of this agreement. I want them to know that the amount of Canadian Pacific grain in the north that is turned over to the Canadian National is automatically strictly limited by the amount of Canadian National grain that is turned over to you people at Calgary.

A. I think it would be fairly stated to say that the number of cars of grain turned over by one railway to the other at either Edmonton or Calgary, as the case may be, depends upon the minimum number which the other railway can turn over at the alternate location.

Q. So putting it roughly there is, therefore, a good deal of grain that comes down off the Northern Alberta, and we will call that Canadian Pacific grain, that is hauled from Edmonton to Calgary and then shipped out over the Canadian Pacific line to Vancouver?

A. I have not any idea of the amount.

Q. Now, I want to ask you one more question about the statute. I am anxious to tie the operative words of the statute into the work that your committee is doing. Under the statute you are under an obligation forthwith to agree and continuously to endeavour to agree respecting those matters which you feel are economical?

A. So I understand, yes, sir.

Q. And that applies to everything; that applies to this question we discussed on Friday and again this morning for a moment, the other than grain traffic between northern and southern Alberta, the exchange of

other than grain traffic for furtherance to the west coast?

A. Yes, sir.

Q. In other words, you would necessarily regard these operative words as controlling^{all}/of this arrangement?

A. Yes, sir.

MR. FRAWLEY: Thank you, Mr. Armstrong; that is all.

COMMISSIONER ANGUS: Q. You said that co-operation and force are not good bedfellows?

A. Yes, sir.

Q. Do you think that co-operation and competition are good bedfellows?

A. They are difficult bedfellows. I have made a statement on that also.

Q. Do you think that the Act we are considering leaves open to the two railways a field of competition with each other which is of real importance to shippers and consumers?

A. Perhaps the answer to that might be that if there were one hundred per cent co-operation there would be no competition. Every time you move into a co-operative project to that extent some type of competition is eliminated.

Q. Do you think, however, that at present there is some competition which is of importance to shippers? Do you think they are getting better treatment than they would get if there were one hundred per cent co-operation?

A. It is my information that whenever an industry, or other shipper is seeking to locate its plant it endeavours to get its plant on to both railways, in order to have the advantage of the competition between them. Perhaps that is an indirect answer to your question.

COMMISSIONER INNIS: Q. Is it to have the advantage or to prevent the exploitation?

A. Are they not two sides of the same medal?

COMMISSIONER ANGUS: Q. What form does that competition take, the competition of which he gets the advantage?

A. A matter of service.

Q. Could you illustrate?

A. Well, being neither an operating nor a traffic man, I would have difficulty illustrating, but as an engineer I would say that where without competition service between Montreal and Toronto might be second morning delivery, today it is next morning delivery.

THE CHAIRMAN: Q. Do you mean competition with the trucks?

A. No, sir; competition between the railways.

Q. That has brought that about, has it?

A. I don't know that it has brought that about; I cannot answer that, sir; but there has been a demand for increasing speed of freight shipments, and if there were no competition between the railways, if there were just the one railway and no railway competition, there would be no incentive as far as another railway is concerned for either railway to speed up.

Q. I think we were told that this truck competition really brought on that more rapid service.

A. It may be; but I think the same---

Q. That would apply to both railways?

A. I think the same would hold where there was no truck competition and the two railways were serving the same territory. I may have chosen an unfortunate example in taking Montreal-Toronto, but I think the same thing would hold in non-competitive (so far as trucks are concerned) territory.

COMMISSIONER ANGUS: Q. I was going to say,-- this may not be a fair question to ask you, but in the aggregate do you think that the benefits that shippers get from measures of competition between the railways would outweigh in the balance the additional cost to shippers of bulk commodities for long distances that are occasioned by co-operation not being one hundred per cent?

A. I do not think I know how to answer that question.

Q. All right, thank you very much.

A. It seems to me that our present type of civilization in Canada is based on competition, and in so far as that civilization is worth retaining, perhaps that is one of the parts that should be retained -- and I am not a Red.

COMMISSIONER INNIS: Q. You want a monopoly to maintain competition?

A. You must avoid a monopoly in order to maintain competition.

Q. I was just wondering whether you were putting yourself in a position where competition was so important that you would welcome any sort of support (which would guarantee it; that is to say, you would welcome a monopolistic control to guarantee it, but above all things we must have competition?

A. I can only make a general statement, because I

have in no sense analyzed the situation to find out what competition is costing and what the benefits of competition are in so far as the railways are concerned.

COMMISSIONER ANGUS: I asked my question because the shippers have not been very forthcoming in telling us of the benefits they receive from competition. I do not think we have had any evidence on the record of that.

MR FRAWLEY: I think, sir, that I have admitted that there is now a low rate between Calgary and Edmonton on the first four classes that is only there because of truck competition.

COMMISSIONER ANGUS: I meant the competition between the two railways, Mr. Frawley.

MR FRAWLEY: Oh, I am sorry, sir. I think you are quite right.

THE CHAIRMAN: Mr. Brazier.

CROSS-EXAMINED BY MR BRAZIER:

Q. Mr. Armstrong, just to follow up a bit Mr. Frawley's questioning with regard to the grain in Alberta, would you agree that the Canadian National Railways have a much cheaper operation through the mountains than the Canadian Pacific Railway?

A. I would think they probably had, yes, sir.

Q. It is a fact, is it not, that there are practically no grades on the Canadian National between Jasper and Kamloops?

A. Their grades are lighter than the Canadian Pacific grades.

Q. About one per cent is the biggest grade they have, isn't it?

A. I don't know that it gets that high; I don't know

the figures.

Q. It is very much under your own grades?

A. Yes, sir.

Q. And the Canadian National can haul a full trainload right from Edmonton to Vancouver of fifty-eight cars; is that considered a full trainload?

A. I do not know what they consider a full trainload.

Q. What do you consider a full trainload with one crew?

A. What the locomotive can haul.

THE CHAIRMAN: Q. I beg your pardon?

A. What the locomotive can haul.

MR BRAZIER: Q. What would that be on an average?

A. I don't know. It depends on the weight of the cars, the contents, and various other things.

Q. Isn't there some regulation regarding the number of cars you can put behind an engine, by the crew that you have, for one crew?

A. It is my impression that an additional man is added to the train crew when the number of cars in the train exceeds a specified number.

Q. What is that specified number?

A. What that number is I do not know. That is an engineering problem.

Q. If you had fifty-eight cars being hauled from Calgary to Vancouver you would have to split it up; if they were heavily loaded cars you would have to split it into about four sections over the mountains, wouldn't you?

A. That also is not an engineering problem as such. I do not know what they are handling.

Q. Have you no knowledge of that at all, Mr. Armstrong?

A. No, sir.

Q. You do know that it is necessary for the C.P.R. to

add two and three and sometimes more engines on a train going over the mountains?

A. Yes, sir.

Q. And that does not occur on the Canadian National?

A. I do not know their operating practices.

Q. I wonder, Mr. Armstrong, if you would turn to page 132 of the C.P.R. brief, Part I; on pages 132 and 133 you list the projects which have been adopted under the C.N.-C.P. Act. I call your attention, Mr. Armstrong, to the fact that out of a total saving of approximately \$1,200,000, almost \$1,000,000 of that was saved with regard to passenger service?

A. Yes, sir.

Q. As a matter of fact, the only substantial saving that has been made under the Act has been in regard to passenger services?

A. Yes, sir.

Q. And that substantial saving was made simply on pooling of three services between Toronto and Montreal and Toronto and Ottawa?

A. And Montreal-Quebec.

Q. And Montreal-Quebec?

A. Yes, sir. You understand that I do not know whether that is a saving today. That was the estimated saving at the time the report was submitted.

Q. Would it be reasonable to suppose that the saving today would be greater or less, bearing in mind that your costs have substantially increased since---

A. As I stated earlier in my evidence, in times of depression, if I may use that term, when the two railways are each operating independent trains between two points, each we will say less than half full of passengers and other load, there is definitely a saving to combine those

two trains into one and operate that as a pool train. When business increases so that one pool train may be consistently operated in two sections, then there are still two trains running, and there is no saving whatever.

Q. Well, the point I am interested in, Mr. Armstrong, is to know the reason why this pooling of passenger services was not carried to a wider extent back in 1933 and 1934?

A. Many other locations for pooling of passenger services on various bases were studied, and the cost of putting them into effect was so great that it made the then rather doubtful economies not worth while.

Q. Well, let us take a specific example, between Ottawa and Montreal; why was not the passenger service between those two points pooled when it was pooled around the other two sides of the triangle?

A. Because of the divergence of territories served by the two railways between Montreal and Ottawa.

Q. Well, does the pooling of your fast passenger trains require giving up of the territory completely? You still run the local trains, don't you?

A. Still run local trains, yes, sir, but the pooling is only between Montreal and Toronto and certain specified common points. It is not all traffic handled on those trains.

Q. I quite appreciate that. That is why I asked you as between Ottawa and Montreal why it was not pooled?

A. The same number of trains would have to be run. There would be no purpose in the pooling of revenue if there were no saving in train miles.

Q. Do you know whether or not the Canadian Pacific make money out of their passenger service?

A. I know the general opinion, but I have no ~~know~~

knowledge of the figures.

Q. Well, what would you say that general opinion is, Mr. Armstrong?

A. I think the general opinion of all railways is that the passenger service is a losing business.

Q. So if at any place you can cut down your passenger service, you would be taking less of a loss than you would otherwise be; isn't that so?

A. If we were permitted to do so by the trucks, yes, sir.

Q. Now, have any other applications besides the three pools been placed before the Board of Transport?

A. No, sir -- you mean in regard to pooling?

Q. Yes, pooling of passenger service.

A. No, sir.

Q. These are the only three that have ever been proposed?

A. Yes, sir -- ever been laid before the Board of Transport Commissioners. Many others have been proposed and discussed and considered by the railways.

Q. I think you show one here of a general pooling of transcontinental traffic, don't you?

A. As a matter that has been studied?

Q. On page 137 you mention projects on which study was interrupted owing to war activity?

A. Yes.

Q. "Nation-wide pool competitive passenger train services."

A. Yes, sir.

Q. I suppose that would cover your transcontinental service?

A. That was a study of all competitive passenger train service throughout Canada, and it was reported on once. The

report came in to the Joint Co-operative Committee, and after study and even submission of a report to the Joint Executive Committee it was referred back for further study. It was in the second study stage, if you choose, when the war interrupted the activity.

Q. What has happened to that particular study since that time

A. Well, during the war, when the railways could not find enough equipment or men to handle the passenger business that was thrown upon them, there was no study given to it at all.

Q. I quite appreciate that, Mr. Armstrong. The railways were used to full capacity?

A. Yes, sir.

Q. I am suggesting to you today that the situation is changing somewhat, particularly in your passenger services; your revenues are again falling?

A. Yes, sir.

Q. Very substantially; and I wondered, bearing that situation in mind, whether the management have again decided to study this problem?

A. It is unnecessary for them to again decide to study. The Joint Co-operative Committee has instructions from the Joint Executive Committee to study.

Q. And that study is going on at the present time?

A. Those instructions still stand.

Q. Would it be your opinion that there are no economies, no substantial economies, to be obtained by the pooling of passenger service?

A. They have not yet been discovered, and were not discovered in the first study of it that was made.

Q. But yet the three plans that were put into effect did bring about very substantial savings?

A. They brought about estimated savings under 1933 conditions. Whether there is any saving in them at all today I do not know.

Q. Now, take the situation speaking for my own province, your transcontinental service out at Vancouver. Both railways run one train to Montreal and one train to Toronto out of Vancouver each evening; is that correct?

A. I think that is correct.

Q. And the C.P.R. also run an additional train in the morning?

A. Yes, sir.

Q. Do you think there is the traffic on that run now to warrant five trains on transcontinental service each day?

A. I know that during the depression, when there was not traffic to warrant that number of trains, they were reduced very promptly. There was only one train out of Vancouver for Sudbury, and it divided there into the Montreal and Toronto lines. The morning train is not a fast train; it is the work-horse train, so to speak.

Q. The wayside one?

A. It handles all the business along, so as to relieve the fast trains of stops.

Q. So you say that from the mere fact that those trains are still in operation, you are of the opinion that the traffic warrants it?

A. Yes, sir, that would be my assumption.

COMMISSIONER INNIS: Q. You must get the permission of the Board before you can take off a train?

A. So I understand; in order to abandon an operation we must go to the Board and prove that we do not require that train.

Q. Do you find the Board very receptive to quick action?

A. I have never been before the Board in that matter, so I do not know how they handle it, Dr. Innis.

(Page 21147 follows)

MR. SPENCE: I don't think there is any doubt about the whole thing getting permission of the Board when it is necessary to withdraw trains. As a matter of fact there is nothing in the Railway Act that requires us to obtain the Board's permission merely to take off a train. It has always been the practice of the railway companies to apply to the Board when we were proposing the taking off of a passenger service altogether, although even there the Act does not compel us to, but as a matter of courtesy to the Board and as a matter of protecting our position.

COMMISSIONER INNIS: You do purely as a matter of courtesy?

MR. SPENCE: As a matter of courtesy and as a matter of showing the public why it is justified that we are discontinuing the passenger service, we do apply to the Board and get an order.

COMMISSIONER INNIS: The protest that might develop in any community against dropping a train service would not be comparable to that of abandonment of lines?

MR. SPENCE: No, not comparable to the abandonment of lines although we do quite often have protests in considerable numbers.

COMMISSIONER INNIS: Would they go before the Board?

MR. SPENCE: And changing our service. Yes, before the Board.

COMMISSIONER INNIS: Even taking off a train?

MR. SPENCE: Even taking off a train. What we do in changing a schedule by the taking off of a train

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or even changing its time, is to post notices in all the stations and then we also notify the Board and send the Board a copy of the notice. Then protests if any, go to the Board of Transport Commissioners and the Board asks for our submission on the matter, and if it thinks the situation is sufficiently serious to justify a hearing, it will have a hearing at the point or points where the complaints are being made.

COMMISSIONER INNIS: So that although it is a matter of courtesy, it is as a matter of fact really determined by the Board?

MR. SPENCE: It is really determined by the Board.

MR. COVERT: I was going to ask Mr. Spence if it is not really the same thing as putting themselves in the position of having to make an application to discontinue a service, even though the Railway Act does not compel you, from the fact that it does amount to that.

MR. SPENCE: Yes, I think so. In actual practice the complete abandonment of lines requires a very great deal more proof. It is a complicated sort of application with a great deal of material required by the Board. When it is merely the discontinuance of one train we do not have to go back over our records and supply such voluminous figures, but the Board has to be satisfied that a genuine saving is to be made that outbalances the inconvenience to the public.

MR. O'DONNELL: I think it is governed by the provisions of Section 312:-

"That the Company shall, according to its powers furnish adequate and suitable accommo--
dation for the carrying, unloading and delivering of all such traffic."

That is sub-section (b) and "traffic" is defined in sub-section (35) of Section 2 as: "The traffic of passengers, goods and rolling stock."

Then further on in Section 312:-

"If in any case such accommodation is not, in the opinion of the Board, furnished by the company, the Board may order the company to furnish the same within such time...."

and so on. I think that is the way it works in practice.

MR. SPENCE: Yes, I agree with that. Section 312 is the only Section that governs a situation of that kind.

MR. BRAZIER: Q. Now, just take a situation in another province. I was recently in Calgary, Mr. Armstrong, and noticed an announcement there that the Canadian Pacific were putting on two additional passenger trains a day between Calgary and Edmonton in order to compete with the airways, putting on fast trains, I think, running the distance in four hours. The C.P.R. has the short line between Calgary and Edmonton, is that correct?

A. Yes.

Q. Have you ever suggested that the pool be established between C.N. and C.P.R. on that line?

A. I don't think that has even been suggested by anyone.

Q. Do you know how many trains each railway runs

between those two points?

A. I don't happen to know, no, sir. I trust the Commissioner will bear with my ignorance on matters with which I do not have a concern, in the matter of operation and traffic and things of that kind.

THE CHAIRMAN: There are some things that even the Commissioners don't know.

A. Thank you, sir.

COMMISSIONER INNIS: Your modesty is very gratifying.

MR. BRAZIER: Q. It interested me to see, Mr. Armstrong, that this Montreal - Toronto - Ottawa pool was made effective on April 2, 1933, and the Montreal - Toronto, Toronto - Ottawa, Montreal - Quebec was effective March 11, 1934,. Now, even back in those days those would be amongst your heaviest passenger lines, wouldn't they?

A. Unfortunately they were not in those days.

Q. Well, were they with the C.N.R.?

A. Were they heavy passenger lines with the C.N.R.?
No, sir.

Q. They were not?

A. No, sir.

Q. Speaking relatively were they heavier lines for passenger lines?

A. There were no heavy passenger lines in 1933 and 1934. That was why there was the opportunity.

Q. Speaking relatively they were your heavy traffic lines?

A. They were heavy traffic lines, basically, yes, sir.

Q. And it did not take very long to bring into effect the agreement to pool that traffic?

A. No, sir, there was an agreement. However, it took a great many years to develop an agreement .

Q. You put the economy into effect right away?

A. Yes, sir, we had to save money.

Q. I am interested in knowing why your studies of other competitive passenger traffic should take so long.

A. Because the economy is not there as far as we have been able to discover.

Q. And that was so even back in 1933?

A. The only way in which economy in pooling can be made is by the elimination of passenger trains. Where passenger traffic over a line or, we will say, over each of two lines, one of each railway, has been trimmed to a bare minimum, then the next step is to abandon the passenger line over one line or the other and operate the remaining trains over the remaining line, putting one territory entirely out of commission as far as passenger service is concerned. That is where the rub comes, in where the territories are not completely contiguous.

Q. You are saying to me that there were no economies that could be seen in other pooling of passenger service when this matter was first studied in 1933 and 1934?

A. That is correct.

Q. Are you speaking from the point of view of the Canadian Pacific Railway or from the point of view of both railways?

A. That was the report of the Joint Co-operative Committee which has officers of both railways on it.

Q. And both reported in the same way?

A. Yes.

COMMISSIONER INNIS: Does labour express its views rather strongly on all proposals for pooling?

A. I think that labour is consulted only after agreement has been reached as to what is to be done and then the matter is taken up with labour to find out how to adjust the labour problem in that situation, in the new situation that will arise.

Q. So that they have no voice in the proposal until it has been agreed upon?

A. That is my understanding.

MR. O'DONNELL: I think Section 16 of the Act provides for that.

THE CHAIRMAN: Section what?

MR. O'DONNELL: Section 16 I think, sub-section 1, has reference to that fact.

COMMISSIONER ANGUS: I suppose that dividing labour costs might make some schemes attractive to the managements which were not attractive to the lower classes?

A. I would think so, yes, sir. It is certainly making mechanization economical that was not previously economical.

COMMISSIONER INNIS: Does labour protest occasionally?

A. I could give no details of that. That is another matter that does not fall to the engineer to know.

MR. SPENCE: I do not think there has been any protest made at the hearing before the Board by labour,

And that is the first time.

Yes.

The second time is the first time.

I think that is the first time.

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as far as I know. There may have been presentations made to the railways.

THE CHAIRMAN: Pardon me, would the Board listen to any protests by labour in such a case?

MR. SPENCE: Would they? Oh, I think they would, my lord, yes. The Board is very receptive to anyone who wants to make a representation if in any way he can establish the fact that he is an interested party.

THE CHAIRMAN: Of course, it is a part of that same Section 16 which directs co-operation, directs also that any plan or arrangement you make shall contain or provide for a fair and reasonable apportionment as between the employees of the two railways, that you are to negotiate with the representatives of labour to bring about that effect?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: The representatives of labour are brought right in-to the question by Section 16?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: That is, the railways are further directed that whenever they shall so agree they shall endeavour to proceed through negotiation with the representatives of the employees effected and so on.

MR. SPENCE: Yes, my lord, and whenever a proposal is presented to the Board, the Board of course makes certain that its provisions are followed. What I intended to say when I got to my feet was that I do not recall any case in which labour has had a counsel or representative present to make representations to the Board at the hearing. I think the Board has looked after the interests of labour, as no doubt the railways have

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themselves, by making proper arrangements so that representations are not necessary. I believe there is another Section of the Act that provides how displaced labour shall be taken care of.

MR. O'DONNELL: There is a schedule to the Act, 3 Geo. VI chap. 37 which came into force on 3rd June 1939, and then there is a further provision in 11 George. VI chap. 28, which is the further amendment of 27th June, 1947.

THE CHAIRMAN: One of these amendments, you say, became effective of 3rd June 1939?

MR. O'DONNELL: Yes, that is 3 Geo. VI chap. 37.

THE CHAIRMAN: Yes, I have that. Did you say that there were two Statutes?

MR. O'DONNELL: Then there is a further one, 11 Geo. VI chap. 28 which came into force on 27th June, 1947. I think in the consolidated form of the Act which we provided to the Commission those are included.

COMMISSIONER INNIS: The Board would draw no line as to when labour might be affected and when it might not, that is to say, it would not consider the question of wages for example, but it might consider the question of displaced labour?

MR. O'DONNELL: My reading of the Act is, that insofar as the Board is concerned it has nothing to do with this co-operative measure. The Commission will remember that the only place, so far as I am concerned, that the Board comes into play at all, is the reference to the Chief Commissioner acting *persona grata* as Chairman of the tribunal.

THE CHAIRMAN: That is in case of dispute?

MR. O'DONNELL: Yes.

COMMISSIONER INNIS: I really meant abandonment of lines.

MR. O'DONNELL: That is different.

COMMISSIONER INNIS: Which do come under the Board

MR. O'DONNELL: Oh, yes, I am sorry.

THE CHAIRMAN: If the agreement has to do with the abandonment of a line, the representatives of labour must be consulted by the railways, mustn't they?

MR. O'DONNELL: Yes, under the Act.

THE CHAIRMAN: So that a proper apportionment of the burden between two classes of employees can be provided for?

MR. O'DONNELL: Yes, that is provided for in this Act itself.

THE CHAIRMAN: In that case then it would appear that if the Board is to consider abandonment, it would also consider the position of the workers, wouldn't it?

MR. SPENCE: I think what the railway does is to put in this application to the Board proposing this abandonment - -

THE CHAIRMAN: You show the Board that you have the agreement?

MR. SPENCE: Show the Board that we have made satisfactory arrangements for labour.

THE CHAIRMAN: Well, if you did that of course, but if you didn't do that I cannot see why the workers should not appear before the Board.

MR. SPENCE: No, there is no reason why not.

COMMISSIONER ANGUS: Is it only abandonment cases that have to come before the Board? Could not someone challenge a reduction of service?

MR. SPENCE: Oh, yes.

MR. O'DONNELL: Section 312.

MR. SPENCE: And the pooling arrangement was approved by order of the Board. It was submitted to the Board for approval.

MR. BRAZIER: No objection, I presume, Mr. Spence to that from anybody at that time?

MR. SPENCE: I don't know, I could not say.

MR. BRAZIER: Q. There is another project I would like to discuss with you, Mr. Armstrong, page 138 of the submission. These other projects which have received study, the second one mentioned is the Okanagan Valley pooling of train and boat services. The situation in the Okanagan Valley is that both railways run over the same track between Kelowna and Armstrong, is that correct?

A. Yes, sir.

Q. And you separate there, you going on to Sicamous on the C.P.R. and the Canadian National going to Kamloops?

A. Yes, and they come together again at a point east of Kamloops.

Q. And I suggest to you that the greater portion of the passenger traffic in the Okanagan Valley is obtained along the common line in Kelowna and Vernon and Armstrong?

A. I would expect so, the larger populous centres are on the common line.

Q. Can you tell us now about what the study in that particular instance showed, whether any saving could

be made?

A. I cannot answer that question categorically. The Joint Co-operative Committee recommended pooling of the passenger train service in that Kamloops-Sicamous - Kelowna area. Then when it came to developing the agreement as to how that was to be put into effect, the matter went to our respective passenger traffic managers and they got into a technical tangle of some kind over passenger -- I am not even going to be specific about that; but they found something that they concluded would upset the entire transcontinental rate situation, and the technicalities of that are way over my head, and the Joint Executive Committee withdrew approval of the proposals for those technical reasons, that it seemed to be insurmountable, as I understand it.

Q. But you have no idea what they were?

A. I cannot explain them. It is a technical situation in the passenger rate situation of some kind that I do not understand at all. I confess I never did understand it. I had to accept their word for it, that is the passenger traffic managers.

Q. Then that is the only information you can give us in regard to that pooling or co-operative effort ?

A. Only in regard to that feature of it, yes.

Q. But in the beginning it looked to the Joint Co-operative Committee as if some saving could be made?

A. Yes, sir.

Q. Is there any reason why one locomotive, for instance, could not be operated between Kelowna and Armstrong and haul both C.N. and C.P. passenger cars? Is that a feasible operation or not?

A. I imagine that could be feasible if you knew what to do with the locomotive you took off at Armstrong and if the trains run at the same time.

Q. I can tell you that down there they run at practically the same time. I think there is about half an hour between the two.

A. It may be more economical to run both locomotives to the terminal at Kelowna than to develop a new locomotive terminal at Armstrong.

Q. There are all these technical difficulties which you foresee?

A. Of that expense, yes.

Q. Going to a matter of principle, can you tell me this? What is the first consideration that you meet in any proposed project? What is the first thing that you try to determine? What do you consider the most important?

A. Is there a probability of economy in it. I think that is a fair statement of the first consideration.

Q. Do you mean by that economy to the Canadian Pacific Railway?

A. Economy to the railways since they divide the burden and advantage equally between them.

Q. I would like to approach this just from the point of view of the C.P.R.

A. I don't think that can be done because it is a joint undertaking.

Q. Well, this project is presented to the Joint Committee, is it not? That is the first step, somebody initiates the project?

A. I have stated in my evidence just how it is

initiated.

Q. It comes before them. Then I presume the C.P.R. section goes out and studies it from the C.P.R. point of view and the C.N.R. section goes out and studies it from the C.N.R. point of view?

A. With a Joint Local Committee, both studying it at the same time.

Q. It is directed from there to the local committee, is that correct?

A. To the Joint Local Committee, again joint.

Q. It is all joint?

A. Yes, the whole thing is a joint undertaking.

Q. But the studies you make, you must make the studies of the C.P.R. position in the project, mustn't you? The C.N.R. examine that jointly with you?

A. Definitely.

Q. You have to make your own study of your own situation?

A. Yes.

Q. Then you get back and discuss it with them?

A. Well, the Joint Committee gets together, as far as I know, and discusses it.

Q. And at that point you find out the full picture?

A. The Joint Local Committee develop the facts as they see them or the relevant facts.

Q. What I am getting at is that the C.P.R. men will develop the C.P.R. facts, and then they get together and decide upon the general facts applying to both railways, is that correct?

A. I have never been on a Joint Local Committee but certainly I think if I were, before I submitted any

report I would want to consult with my conferees on the Joint Committee from the other railway to establish, if possible, in what we were in accord and in what we were in disaccord, so that any disaccord that could be eliminated at that level would be eliminated at that level.

Q. But you would expect the Canadian Pacific men on that Local Committee to look after the interests of the Canadian Pacific Railway?

A. I would expect him to develop the facts, yes, sir.

Q. The facts as to the position of the Canadian Pacific Railway?

A. He is in a better position to develop the Canadian Pacific facts than the Canadian National man and correspondingly so for the Canadian National man and the Canadian Pacific.

Q. Now, what would be the position of the Canadian Pacific Railway if a project was suggested which would not result in any saving to the Canadian Pacific Railway but would result in a very big saving to the Canadian National Railway, and by doing that ease the burden of transportation charges in Canada?

A. In principle, the Canadian Pacific I think, would go right along with it because the C.P.R. would get half the benefit.

Q. The C.N.R. would pay to the C.P.R. one half of it?

A. The Statute requires that the burden and advantage be equitably divided, and the railways have interpreted that to mean equally divided.

Q. COMMISSIONER INNIS: Are not the railways holding their cards pretty close to their chests in these negotiations?

A. At times, yes, sir. At other times the thing is not so much so. It depends on what the situation is.

MR. BRAZIER: Q. Then you are supposing, Mr. Armstrong, that the approach of both railways is from the point of view of easing the burden of transportation in Canada, the cost of transportation in Canada as a whole?

A. I think the selfish interests of the railways are that the railways themselves shall make money. Insofar as the railways make money it does ease the situation.

THE CHAIRMAN: Well, Mr. Brazier, you must look to what the Act has in view. The Act gives its object which is to effect economies and to provide for more remunerative operation by the railway. Now, those are the two objects of the Act defined in Section 16. It is for the purpose of effecting economies and providing for more remunerative operation.

COMMISSIONER ANGUS: Are we apt to be a little confused in this way in debating the matter, that any economies made in the long intervals that sometimes elapse between freight rate revisions affect the railways, but when it is merged in the proceedings of a general freight rate revision then it is a question of the shippers gaining or losing?

MR. BRAZIER: Yes.

Q. You have mentioned a number of times during your evidence, Mr. Armstrong, that you must consider the

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competitive position of the railway, and that you should be permitted to carry on business in your own best interests. Now, which would you say is the important consideration, maintaining your competitive position as against the other railway or the easing of this transportation burden?

(Page 21160 follows)

A. Are you asking me to decide which is better, unification or co-operation?

Q. No. I am just trying to attempt to determine your approach to this matter of C.N.-C.P. co-operation.

A. I think I have answered practically that question once before this morning, something in these words: that if we had 100% co-operation we would have unification. There would be no competition under 100% co-operation. Every co-operative move is a move towards unification, because those facilities or those operations that are drawn together in co-operation have become to that extent unified.

Q. I see. Do you therefore attempt to avoid further co-operative measures that would tend more to unification?

A. As I have also stated, I personally am in favour of co-operation to the extent that it can be brought about without detriment to the competitive position of either railway. I think I used the words "serious detriment", if I am not mistaken.

Q. That is one of the guiding principles you bear in mind, the competitive position?

A. We have no authority to bring about monopoly, or 25% monopoly or 50% monopoly; so I do not know how to answer that question.

COMMISSIONER INNIS: Q. Would you say that truck competition is driving you further into co-operation?

A. That would be a very difficult question for me to answer, Dr. Innis.

Q. I was just wondering.

A. Where co-operation can be brought about with economies to the railways, I think it is being done. Assuming for the moment that all economies of that type had been brought about, I do not see how they can force us to go any further.

Q. It has driven you to some distance, to the point where you now are.

A. I think it has made the railway net income less and even made it more desirable that we co-operate to the limit than it may have been when we were both making money as we were during the war.

MR. BRAZIER: Q. I should like to discuss another matter with you just for a few minutes, Mr. Armstrong, and then I am through. I presume that you are acquainted with the late Senator McGeer of Vancouver?

A. I knew him by name.

Q. You never came into contact with him?

A. I never had that privilege.

Q. I should like to read to you part of the evidence which he gave before the Board of Transport Commissioners' hearing in Vancouver on June 19, 1947. That was in the twenty-one percent case. I want to ask you if you would agree with what he is suggesting here so far as the terminal facilities of Vancouver are concerned. I will just read you a paragraph here first. He states that at page 8414, starting at the bottom of the page:

"I have requested Mr. K. J. Burns to attend and give the Board an explanation - - - he was the

Harbour Master or the Port Manager at Vancouver at the time.

-- of the appalling nature of the existing terminal situation in the city of Vancouver. I think it must appear to be extraordinary to almost anyone that a railway system publicly owned and as large as the Canadian National Railway system is should come all the way across Canada and find itself blocked on the south shore of the Fraser River. You know, the Canadian National Railway does not come in to Vancouver, it stops at South

Mr. Armstrong, cr. ex.

Westminster. It gets into Vancouver, by coming over the road of a foreign owned railway, the Great Northern, Just what the terms of that agreement are, I do not know, but I am given to understand it costs almost as much to move freight on the C.N.R. from the Fraser River to Vancouver as it does to move it from Edmonton to Vancouver."

Are you aware of the position of the Canadian National Railways as far as the terminal in Vancouver is concerned?

A. In a general way, yes.

Q. There is no doubt about that; because of your priority or seniority in construction at Vancouver, the Canadian Pacific have the desirable terminal facilities there?

A. Some people think so, yes sir.

Q. Do you not think so?

A. I may be prejudiced.

Q. I would like even your prejudice. As Chief Engineer, that would be a matter that you are particularly concerned with, would it not?

A. Yes, it would be.

Q. And the C.P.R. hold what Senator McGeer later described as a transportation vice on Vancouver in that you have your right of way running down Burrard Inlet and you have a railway running along the north bank of the Fraser River.

A. Naturally, for a great many years we were the only railway there, and had to serve.

Q. And the C.N.R. came in much later?

A. Subsequently.

Q. And they always had an expensive terminal operation in Vancouver. Is that correct?

A. I do not know.

Q. You do not know?

A. That is for them to show, rather than me.

Q. As a railway man, would you look with favour on a joint terminal operation at Vancouver?

A. Between whom? Between the Canadian National and the Canadian Pacific?

Q. Between the Canadian National and the Canadian Pacific.

A. If it proved economical, yes, sir. I would draw your attention to the fact that the Canadian National comes into Vancouver over the Great Northern. That is another case of co-operation. They had the alternative of using the Great Northern or building a line of their own, and they elected to take what was the cheaper alternative.

Q. The lesser evil of the two alternatives?

A. It was cheaper. I am speaking of economies when it comes to operation.

Q. It would depend on the financial position of the companies at the time the Canadian National came into Vancouver originally, would it not? The C.N.R. just took over the conditions of the Canadian Northern Railway?

A. I do not understand how you mean that it would depend on the financial position of the railway.

Q. I put this to you. About the time the Canadian Northern were building their line into Vancouver, they were almost on the verge of bankruptcy, and shortly afterwards did go into bankruptcy. Do you know that to be a fact?

A. That may be.

Q. Therefore expediency might have been the guiding measure in getting into Vancouver?

A. I would hesitate to say that co-operative measures are expediency measures.

Q. Would you call that co-operation if they are paying a heavy toll to the Great Northern?

A. I do not know what they are paying, but it must be less than what it would cost them to build their own line.

THE CHAIRMAN: What is your suggestion in all this, Mr. Brazier?

MR. BRAZIER: That the establishment of a joint terminal in the city of Vancouver is an economy measure.

THE CHAIRMAN: To these two railways?

MR. BRAZIER: Yes.

THE CHAIRMAN: The Canadian National and the Canadian Pacific?

MR. BRAZIER: Yes.

THE CHAIRMAN: Q. Has any such project ever been considered by the two railways?

A. I am under the impression that it has.

Q. Is it listed here in the projects that have been studied?

A. It at least comes into the picture.

MR. BRAZIER: I do not think there is any specific project.

THE CHAIRMAN: Q. There is a long list given here under the heading "Other Projects which have received study". Is it one of them?

A. I think it came into the picture, my lord, under heading that "nation-wide pool competitive passenger train services."

Q. Under what?

A. Under the first item, under the heading "Projects on which study was interrupted owing to war activities"

Q. Where is that?

A. The middle of page 137 of the Canadian Pacific Submission.

Q. "Nation-wide pool competitive passenger train services"?

A. Yes.

Q. That is not what Mr. Brazier is talking about now.

A. No sir. But in order to bring about pooling, it is highly desirable in all cases, and essential in some cases, that the pool trains operate from one station. In that respect I believe under that investigation in connection with the first

report, on that nation-wide pool, the one that is now back for our study, the matter of the joint terminal in Vancouver was considered.

MR. BRAZIER:

Q. That is, the ^{matter of} joint passenger terminal?

A. The joint passenger terminal, yes.

COMMISSIONER INNIS: Have you any figures as to the cost to the Canadian National for operation of the terminal?

MR. BRAZIER: I think these are matters that are so peculiarly within the knowledge of the railways that it is impossible for an outsider to say what the costs are.

COMMISSIONER INNIS: Senator McGeer, when he was putting it at that high level, had some idea about it.

MR. BRAZIER: I think he had had some preliminary investigations made at the time. As you will recall, he died shortly afterwards.

THE CHAIRMAN: Is this one of the measures which would be expected to effect "major economies," in the language used by the premiers?

MR. BRAZIER: I would think so, my lord, yes.

THE CHAIRMAN: This is the first time we have been told anything ^{about} what the railways might have done in the way of major economies, as far as I can remember. Is that what you tell me?

MR. BRAZIER: Yes, that is the suggestion.

THE CHAIRMAN: We were told that there was an absolute lack of evidence that the railways had done anything at all to effect major economies. I had been waiting to find out what ~~it~~ is meant by "major economies" as compared with "minor economies".

MR. BRAZIER: I would respectfully suggest that this is --

THE CHAIRMAN: What did they have in mind when they used that expression "major economies"?

MR. BRAZIER: I would suggest the projects that have already been adopted.

THE CHAIRMAN: Not necessarily major works but the economies must be major.

MR. BRAZIER: Yes. I would suggest that, normally speaking, there is only one project that falls into that category so far, and that is the pool services on the Toronto-Montreal run.

THE CHAIRMAN: Because the economies there are nearly \$1 million a year?

MR. BRAZIER: Yes and all the rest, all the other sixteen, save only some \$200,000.

THE CHAIRMAN: I understand.

COMMISSIONER INNIS: Q. And you would deny that at the moment the economies are as high as that now. You say you are doubtful whether there are any economies?

A. I would say it is doubtful whether there is any economy in that pool, yes.

MR. BRAZIER: Q. On that point, if I may follow it up, what is the term of the agreement on those pool trains?

A. I think it is an indefinite term. I do not recall that exact agreement, but it is probably on the basis of one year and thereafter until a certain notice.

Q. It is not in perpetuity like ^{the} other agreements?

A. No, it is not in perpetuity. Line abandonment agreements must be in perpetuity. When you take a line out of a territory, there is no hope of getting back in there at all. You are through?

Q. So these are the only agreements that ^{are} made in perpetuity, are they? I refer to the line abandonment agreements.

A. I would not care to go so far as to say those are the only ones. I would want to study that matter before I made an all-inclusive statement of that kind.

Q. Have you any specific evidence to indicate that the savings there might not be as great today as they were back in 1933 and 1934?

A. Oh, I think so. I think it is perhaps :general knowledge that in 1933-34 one section, for example, of the fast afternoon train between Montreal and Toronto handled the entire business quite readily; and we know that during :the war it was running in two or more sections at times, and I think it runs pretty consistently in two sections today. The Canadian National operates that pool train and could answer that question better than I can.

Q. They are in charge of the actual operation of it?

A. Yes. It runs over the Canadian Pacific tracks between Windsor Station, Montreal, and Dorval; and between Dorval and Toronto it runs over the Canadian National line .

Q. I became side-tracked a little bit. I was going to read you a further bit of Senator McGeer's evidence taken at page 8416 of the record in the twenty-one percent case. He goes on to say:

"Now, let me suggest this as a plan of co-ordination. The C.N.R. could cross Douglas Island with a bridge on a comparatively level grade, tie in with the C.P.R. at Burrard Inlet, and then tie in with those terminal areas. All our railways should come in on that one level tide water grade. Just because the Canadian Pacific Railway got here first is there any reason why it should hold a monopoly on the grade which nature provided to get into the city of Vancouver?"

THE CHAIRMAN: Is there any answer to that? That seems to be the question.

MR. BRAZIER: That is a rhetorical question. He was presenting a brief to the Commission at the time.

THE CHAIRMAN: Was it ever answered? Was the situation faced there by somebody?

MR. BRAZIER: No. He then called Mr. Burns who was Port Manager at the time, to describe the utter confusion in the terminal situation in Vancouver, the existence of the switching facilities with the C.N.R. the C.P.R. and also the National Harborboard Railway.

Q. Is that not correct.

A. I think that is correct.

Q. And in some circumstances the C.P.R. or the C.N.R. hand cars over to the C.P.R.

A. If there are destined to the C.P.R. at Vancouver.

THE CHAIRMAN: What I want to know just know is what occurred. You brought in the name of Senator McGeer, but nobody answered his case?

MR. SPENCE: No, my lord. This was in the twenty-one per cent case, in the original hearing in the twenty-one per cent case.

THE CHAIRMAN: I know. But as I say, when Senator McGeer made this argument and brought Mr. Burns in as a witness and so on, was he met by the C.P.R. and the C.N.R. in reply?

MR. SPENCE: No my lord; because we took the position that we were dealing with a freight rate case. The Board had stated that it had no jurisdiction to look into co-operative measures in the course of that case. Therefore we felt--

THE CHAIRMAN: As reflecting on the requirements of the railways for higher freight rates?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: I suppose any economies that you had procured through co-operation were reflected by the lessening

of your requirements?

MR. SPENCE: Quite so.

THE CHAIRMAN: And you say there is the whole story -- and I am speaking of the \$1 million -- there: "We say that \$1 million a year by these pooling arrangements. Otherwise we would be asking for \$1 million more"?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: In the way of your requirements. Is that right?

MR. SPENCE: Yes, my lord; and that at that time it was utterly impossible, in the course of the freight rate case, to go into the details of every single one of these co-operative measures.

THE CHAIRMAN: You say that the Board agreed with you that they had no jurisdiction to go any further into the statute than that. Is that so?

MR. SPENCE: Yes, my lord. They held that they had no jurisdiction, under the Canadian National-Canadian Pacific Act to conduct an investigation designed either to compel the railways to carry out more co-operative measures or even to investigate them under the Canadian National-Canadian Pacific Act.

THE CHAIRMAN: Suppose they had had the jurisdiction. Suppose they could have found these measures by ^{which} the railways might have effected \$4 million or \$5 million more in the way of economy if they had co-operated fully within the spirit of this Act. What could the Board have done? Could they have granted a lesser increase of rates than otherwise would have been granted in the way of a penalty? I am asking this not only of you but of everybody concerned. Perhaps we will hear about it later.

MR. SPENCE: Yes. I should like to refer to that in my argument, my lord.

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THE CHAIRMAN: There must be something in view, because it is a fact that the provinces did assert to the government that there was an absolute lack of any evidence to show that the railways had taken proper measures to provide major economies. When I read that I thought there was something in mind there, that . . . doing so and so and so and so would produce a major economy, and that the railways had no evidence either to show that they had made any attempt to bring about such a major economy or major economies, and that the Board simply said, "We have nothing to do with that. We cannot consider that as in any way now . . . lessening their requirements or lessening the increase which we think would we should grant them." I should like to know what is to be suggested about it, before we leave the question.

MR. SPENCE: Speaking of what you said a moment ago, my lord, I think the situation was not that the railways had no evidence to show that they had done nothing but that no evidence was adduced ^{before} the Board. The railways had plenty of evidence --

THE CHAIRMAN: Did you go so far as to tell the Board what you are telling us here?

MR. SPENCE: No.

MR. MACPHERSON: No. That was the point. When the question as to the Canadian-National-Canadian Pacific Act came up and any saving or any major economies or otherwise that had been effected under it, we were told by our friends of the railways that this was not a matter that could be gone into before the Board at all. Consequently, what has been told to your Commission was not told to the Board.

THE CHAIRMAN: Do you intend, at the proper time, to propose to us, that hereafter the Board should consider this matter?

MR. MACPHERSON: That is correct.

THE CHAIRMAN: And if the Board was to find that the railways might have effected certain economies during this year or series of years, that they are then to take that into consideration in fixing rates?

MR. MACPHERSON: That is so.

THE CHAIRMAN: Is that the idea?

MR. MACPHERSON: That is so.

MR. FRAWLEY: Your lordship this morning mentioned that the premier's statement in effect indicated that there was an absolute lack of any evidence of major economies?

THE CHAIRMAN: That is my recollection.

MR. FRAWLEY: That is the word, I think. All I would say is that that word "major" was just a nice round word. We could very well have said that there was no evidence of any economy.

THE CHAIRMAN: Yes. Naturally, in reading that language, I thought there was a suggestion there that they must have in mind that there were outstanding certain major economies that the railways might have accomplished and which they showed no evidence of having accomplished at all.

MR. FRAWLEY: That is right. I would not like your lordship to think there was some evidence of minor economies and no major economies. They simply took the ground, with regard to the statement made, that it is not the proper basis on which to talk about it at all.

THE CHAIRMAN: What I have been hoping to hear -- though they have not been pointed out to us -- was that there are certain major economies that the two railways can effect if they would only get together. You have not any such evidence? Mr. Brazier mentioned this one in Vancouver which perhaps will turn out to be such a major

economy if it is rightly considered. If there are any others, we would like to know what they are.

MR. BRAZIER: As I recall it, when Senator McGeer was giving that evidence, he was then mayor of Vancouver, and he received a cool reception from the Canadian Pacific Railway, to whom it was obviously addressed. Certainly no attention was paid to it at all, because they took the ground, and they were upheld, that it was not a proper matter at all to even discuss. At page 7536 the Canadian Federation of Agriculture goes on ⁱⁿ its second suggestion, that the Railway Act be amended to provide that the Board of Transport Commissioners, when considering general freight rate increases, must take into consideration the extent to which the railways have endeavoured to bring about economies by cooperation or in accordance with the proposals made by the tribunal.

Your lordship has brought that down finally and said what would be the position if they came to the conclusion that there should have been economies and there were not economies, after the Board sitting there to determine the financial need. They might very well make arbitrary reductions in the expenses themselves for rate-making purposes. I presume that would naturally follow.

THE CHAIRMAN: We will likely hear more about it later. We will take a few minutes recess.

-- Recess.

(Page 21175 follows)

--After Recess.

MR. BRAZIER: Q. The point I wish to make, Mr. Armstrong, is that so far as the port of Vancouver is concerned there is no doubt in your mind, is there, that the C.P.R. is in the best competitive position for handling that traffic?

A. From the engineering side I would be inclined to think so.

THE CHAIRMAN: Q. From what?

A. From the engineering side I would be inclined to think so, yes, sir.

MR. BRAZIER: Q. At the same time you say the Canadian Pacific would be quite willing to study a plan for joint operation at the port of Vancouver if economies could be realized as a result of that economy method?

A. I think the question on that was whether we would consider a joint passenger terminal.

Q. I am asking now whether you think the Canadian Pacific Railway would be willing to study a project leading to the unification of all terminal facilities?

A. I think the Canadian Pacific has never declined to study any proposition that was put to them jointly.

Q. And if substantial economies could be made, that is, substantial economies to the two railways jointly, the C.P.R. would have no hesitation in entering into the necessary agreement?

A. It would depend entirely on the amount of the economy. If the economy by going into that was only \$500 I would say that we should maintain our position as we are. If the economy was substantial that is something else again. The whole thing would have to be studied to determine the situation.

Q. I put it on the basis that a substantial saving can be effected?

A. I don't know why they would object. We are looking for economies.

Q. Are you generally against joint terminal operations?

A. No, sir.

Q. Some railway men are? Is that so?

A. I cannot answer that question. I can say that I am not against them. We have many joint terminals right now.

Q. And you find they all work out quite satisfactorily?

A. Yes, sir, so far as I am aware.

MR. BRAZIER: I think that is all.

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CROSS-EXAMINATION BY MR. O'DONNELL:

Q. Mr. Armstrong, the other day when we were discussing the matter of disputes arising -- and I use the word "dispute" as it is used in the Canadian National-Canadian Pacific Act -- in so far as these joint committees are concerned a dispute as such would only be formulated and arise at the level when the matter is being dealt with by the joint co-operative executive committee?

A. The joint executive committee.

Q. Yes.

A. Not the joint co-operative committee because the joint co-operative committee refers its disagreements to the joint executive committee.

Q. Possibly I used the wrong term. It is at the joint executive committee level that a dispute would be definitely formulated and ^{would} arise, not at the lower level where the joint co-operative committee is considering the matter?

A. That would be my understanding, definitely.

Q. I think that is what you had in mind the other day?

A. Yes, sir.

Q. Now, I think you remarked to Dr. Innis that co-operation and force are not good bedfellows and that co-operation and competition were difficult bedfellows. I think that is the way you put it. I take it you would regard competition as good except where it becomes wasteful, or rather that co-operation is good except where it becomes wasteful?

THE CHAIRMAN: Except --

MR. O'DONNELL: Q. Except where it might become wasteful. Competition is good except where it becomes wasteful?

A. I would say so, yes, sir.

Q. In those circumstances, and under the Act as it presently stands, with the provision for an arbitral tribunal there is an arrangement whereby any particular proposed scheme for co-operative savings could be examined by an independent body on the merits of the matter and could be decided by the arbitral tribunal?

A. Yes, sir.

Q. And you would consider that as a reasonable way of handling a dispute?

A. If it reached that stage, yes, sir. I still think it might have a detrimental effect to the general co-operative atmosphere.

Q. If you say that then you must get to the point where you would be refusing to co-operate merely because the other party that the Act envisages might believe that a particular venture was one which should be examined on its merits and decided by the arbitral tribunal in the

final analysis?

A. And the other party might have similar problems confronting it.

Q. That is right.

A. If the railways dropped all of their problems in the lap of a series of tribunals I think in the one hundred per cent case co-operation would cease to be left all in the hands of the tribunal.

Q. There is not much likelihood of that happening between reasonable men?

A. It does not seem so to me.

Q. If there were a project under consideration as to which there was a bona fide dispute, in other words, the Canadian National might take one position and the Canadian Pacific might take another, and the Canadian Pacific might think there was a saving to be achieved and the Canadian National might think there was none to be achieved, then it is reasonable to submit that to an arbitral tribunal?

A. I think it runs beyond the matter of economy in that respect. It seems to me that the competitive position of each railway enters into the picture.

Q. But all that would be examined by the arbitral tribunal, and the arbitral tribunal with all the facts before it would decide the matter?

A. No doubt.

Q. In all these things there has to be one court of final jurisdiction and final judgment?

A. It would seem so.

Q. In those circumstances the Act as it now stands provides that type of machinery?

A. It does.

Q. You would not want to suggest to this Commission

that because the C.P.R. might ask for an arbitral tribunal in a particular case that the Canadian National would refuse thereafter to consider on the merits of each respective case further proposals which might be submitted by the Canadian Pacific?

A. I do not think that would be my thought, no.

Q. I would not think so. Vice Versa, you would not think the Canadian National, if it proposed a co-operative measure to the Canadian Pacific which it felt would be in the joint interests of the two roads and which went to arbitration, that that would preclude any further examination of possible co-operative ventures?

A. I would not expect so in the broad terms that way. What I had in mind in my statement was that some of these co-operative projects or proposals are difficult nuts to crack, exceedingly difficult nuts to crack, and as soon as the railways began to use the arbitral tribunal to crack these nuts and let the chips fall where they may, there might be an increasing tendency to turn to the arbitral tribunal, and I think that a case before the arbitral tribunal would not be a co-operative matter at all.

Q. Is that not what parliament intended when it created these arbitral tribunals? It was to take care of exactly such a situation as that where there might be a bona fide difference of view as between the two transcontinental railroads in Canada?

A. I would think so.

Q. And in the circumstances if either invoked the use of a tribunal that is the fair and proper thing to do in the light of the statute of parliament?

A. I think it is quite in order under the statute, yes.

Q. You would not suggest, as I took it you were intimating, that that would preclude any further co-operative measures being considered on their respective merits?

A. Oh, no, I did not say that at all. I cannot turn quickly to the words I used, but I said something to the effect that I thought it might have a definite effect on the co-operative atmosphere, or words to that effect.

Q. Any party to a lawsuit hates to lose the lawsuit. There is no question about that, and if it reached the point where the Canadian Pacific won a case and the Canadian National lost the arbitral judgment it is not unlikely that the people who represented the Canadian National might think it was too bad that the arbitral tribunal did not decide in our favour, but that should not preclude the continued study in good faith by both parties of similar proposals that might arise in the future?

A. I would expect those studies to go on, and I would expect the human beings who constitute the various committees to have, subconsciously at least, a certain remnant left from their loss --

THE CHAIRMAN: Are we not merely speculating? Does anybody suggest that the Act ought to be amended in any way?

MR. O'DONNELL: I have not.

THE CHAIRMAN: The Act must be taken as a whole, and it provides for co-operation and for a tribunal. Nobody wants that changed. You do not want that changed?

MR. SPENCE: No, my lord.

THE CHAIRMAN: And you do not either?

MR. O'DONNELL: No.

THE CHAIRMAN: Are you trying to read the mind of the men --

MR. O'DONNELL: I was merely inquiring what Mr. Armstrong had in mind when he said that if we used the machinery in the Act that was bad in the final analysis.

THE CHAIRMAN: That is beyond our ken. How do we know what the reaction would be of a human being ten years from now who might be president of one of the railways?

MR. O'DONNELL: That was not my point.

COMMISSIONER ANGUS: Q. Do you think it is a weak point in the Act that the Canadian Pacific has no incentive to make use of it if the level of freight rates is undergoing revision while the Canadian National has just as much incentive to make use of it then as at any other time because the Canadian Pacific is the yardstick?

A. I would be inclined to say that the C.P.R. is out to operate as economically as it can, and when it finds an opportunity, by co-operation or otherwise, to make an economy it is very willing to accept that opportunity. It must make money.

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EXAMINATION BY MR. COVERT:

Q. There are two points I want to take up. One is the question of labour. I notice that subsection 1 of section 16 of the Act reads in part:

"They are further directed that whenever they shall so agree they shall endeavour to provide through negotiations with the representatives of the employees affected, as part of such measure, plan or arrangement or otherwise, for a fair and reasonable apportionment as between the employees

Q: Are you trying to read the mind?

A: I was merely indicating what Mr.

Q: ... was not in the ...

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of National Railways and Pacific Railways, respectively, of such employment as may be incident to the operation of such measure, plan or arrangement."

That seems to indicate that wherever employees are affected that a part of those negotiations must involve negotiations with the representatives of the employees of both railways?

A. It has been my understanding that the purpose of that subsection was that a given co-operative measure should not result in the employees of one railway being discharged, all the employees affected being discharged, and all the employees on the other railway kept. There has to be an equitable distribution of burden and advantage, and that carries the burden portion down to the labour level. That is my understanding of the intent of that.

Q. What I want to come to, Mr. Armstrong, is that in almost every project that would bring about major economies the question of labour would be involved, would it not?

A. I think that practically all expense is labour.

Q. The reason I ask that is that it seemed in the United States, where they passed a somewhat similar Act in 1933, that one of the main problems was the labour problem, that you could not effect economies without affecting labour?

A. Yes, sir.

Q. You have found that to be the same in Canada?

A. Yes, sir.

Q. Now, I want to be clear about these committees. You have at the top the joint executive committee which consists of directors from each road?

A. Yes, sir.

Q. And among the directors are the presidents of each road?

A. Yes, sir.

Q. Then the next is the joint co-operative committee which consists of technical officers?

A. So alleged, yes, sir.

Q. And then the joint local committee. I take it that the purpose of the joint local committee, also consisting of officers from each road is that they would look at the problem -- ordinarily it would be a local problem -- on the ground, so to speak?

A. Yes, sir.

Q. And they make studies and present the facts which go to the co-operative committee?

A. Yes, sir.

Q. And there it is studied by the --

A. Technical officers.

Q. And I want to follow up what Mr. O'Donnell was bringing out, that there is not a possibility for a dispute with the local committee because they are really gathering facts. They may have different opinions and different ideas, but they present the facts, and I suppose it might be a unanimous report on the facts or it might consist of two reports?

A. Yes, sir.

Q. Then that goes to the co-operative committee, and again would the same position not arise, that they are not in the position to decide at that level, are they? There still could not be a dispute because they must present the facts?

A. They must report their matters of disagreement to the joint executive committee.

(Page 21185 follows)

Q. Yes, but there still could not be a dispute?

A. Not a dispute as I understand the term in the Act.

Q. Then it goes from there up to the Joint Executive Committee, and I suppose the situation really amounts to this, that if it did so happen that three members of the Joint Executive Committee, three from one railway, disagreed with the three from the other railway, they could simply refer the thing back to the Co-operative Committee for further study?

A. That is, the Joint Executive Committee could send it back for further study?

Q. Yes.

A. Yes.

Q. Perhaps you have answered this, but is there any casting vote at the Joint Executive Committee level?

A. No; it is equal numbers.

Q. Equal numbers; and there is no casting vote by a chairman?

A. Not that I know of at all, no, sir.

Q. So as long as they could send it back for further study there is not likely to be a dispute unless at the Joint Executive Committee level they decide, "Well, there is nothing further that can be done about it, there is no point in even sending it back"?

A. May I bring you up through those committees, please?

Q. Yes.

A. To give you my view of the matter. The Joint Local Committees consist of local officers who are thoroughly conversant with the minutiae of the matter, whatever that matter may be, but whose outlook on a system basis is probably very restricted ; that is, they tend to be either division officers or district officers, not system officers. When they transmit their report to the Joint Executive

Committee, there for the first time ordinarily it is examined from the system point of view rather than the division or district point of view. Then when it goes to the Joint Executive Committee it is dealt with in the matter of policy. If that makes it any more clear how the three committees operate, I hope it will be helpful.

Q. I think that is helpful, Mr. Armstrong. Just to pursue that matter further, the dispute would only arise if at the policy level in the Executive Committee they could not agree that it was even worth sending back to the Joint Co-operative Committee?

A. I think, as I understand it, that the decision to invoke an arbitral tribunal would not rest with the Joint Executive Committee as a whole but rather with the management of one railway or the other.

Q. I understand that either company can invoke the tribunal, but my point is this, that as long as the Joint Executive Committee did not disagree so flatly as to say that there is no point in sending it back for further study, there will never be a dispute?

A. I would think that might be the case, because I think they are endeavouring in every way to co-operate. Ordinarily when these reports are referred back -- and there have not been a great many of them -- from the Joint Executive Committee to the Joint Co-operative Committee, it has been referred back to study on this other basis, still seeking means of reaching accord.

Q. Then the last thing I want to discuss with you: Have you section 16 of the Act before you?

A. Yes, sir.

Q. It is about three lines down from the top of page 9, I think, where it says:

" . . . for the purposes of effecting economies and

and providing for more remunerative operation, directed to attempt forthwith to agree and continuously to endeavour to agree, and they respectively are, for and on behalf as aforesaid, authorized to agree, upon such co-operative measures, plans and arrangements as are fair and reasonable and best adapted" --

skipping the brackets for a minute --

"to effect such purposes."

Now, you have there the words "fair and reasonable", and then you have in the brackets "with due regard to equitable distribution of burden and advantage as between them". Now, I understand that you said that you regarded the word "equitable" as meaning "equal"?

A. The Joint Co-operative Committee amongst its early considerations considered the word "equitable", and they said, "What is equitable? Twenty-five-seventy-five, or forty-sixty?" The distribution to be equitable, if it is fifty-fifty, certainly is equitable, and there may be other interpretations of other percentages, so they adopted the principle of endeavouring to get a straight fifty-fifty division.

Q. What I wanted to find out was, did they ever have cases such as this, that they might say, "Now, on this project, although it may be forty-sixty, we will have another project which will be sixty-forty," and they would balance out like that?

A. Ordinarily it does not work out that way, because it comes down finally to an annual payment in dollars by one railway to the other or the opportunity to pay off that annual payment in one capital lump sum; that is where the---

Q. Well, you gave one case, you see, where apparently

the proposal was approved and it meant the abandonment, I think, of some Canadian National lines. Now, that was held up, because you were waiting until there could be a similar abandonment by Canadian Pacific; in other words, the National said -- apparently not just the National said, but the Executive Committee apparently agreed that this thing would not be proceeded with until they could find another one, so that you would have an abandonment by both. Now, that, I take it, is from the point of view of the competitive position of the two roads?

A. Not necessarily.

Q. I see.

A. In an abandonment of some 140-odd miles of railway there are all kinds of terrifically knotty problems to solve. At the time this matter was under consideration there was no anticipation, as far as I was concerned at least, of war and all the upset that has occurred in the interval, and if things had gone along just normally it was expected that there would be an offsetting perhaps develop which, in respect of these -- I don't like to call them intangible matters, but exceedingly difficult matters to put down in dollars and cents, might be considered to be in balance, we would not have to worry about them in putting them in dollars and cents.

Q. The thing that bothers me about that case, Mr. Armstrong, is this, that apparently everybody was agreed that this would effect economies?

A. They were.

Q. Then, if that was so, one would have thought that for the benefit of the country as a whole and for the benefit of the railroads that would have been proceeded with regardless of whether or not there was another project in view?

A. That argument was made.

Q. Now, what I wanted to find out was just how you justify not going ahead with that project under the terms of the Act?

A. Perhaps I can jump away into the future at that time and say, thank goodness we did not abandon it.

Q. That may be; I want to come to that in a moment.

A. This is a type rather than an instance, perhaps. I understand what you are driving at. It was expected, as I say, that there would be an offsetting proposition that would let us out of a terrific amount of work and perhaps save time if it were done within a reasonable period.

Q. But the railways did feel, did they, that even though economies could be effected there must be an equal giving up of advantage by one road and the other?

A. An equitable distribution of burden and advantage, yes, sir.

Q. But you do not apply that to each individual case, apparently?

A. In a good many cases there have been paired cases, such as the car men in Quebec and at Saint John. You see, that had all the advantage of balancing labour, of balancing what I have improperly called intangibles, things that are exceedingly difficult to figure.

Q. Now, there are cases, I presume, in which the fact that you had the C.N.-C.P. Act, which involved co-operation between the two railways, did not in any way stop the railways from going ahead with projects of their own; for instance, if they did not involve the other railway at all, if you could make economies by abandoning lines, or anything of that sort?

A. Certainly not, certainly not.

Q. And those were not taken into consideration in

operating under this Act?

A. No, sir. Those were outside of this Act entirely, and in fact during the period we were entering into agreements on matters that did not come under co-operation as listed in the latter part of that Exhibit 284.

Q. Now the last question I want to ask you: I understand you have grave doubts that in many of these cases where there have been co-operative efforts, under traffic conditions as they now exist, there are really substantial savings?

A. That there are economies of the order of those that were estimated at the depth of the depression; yes, sir.

Q. I think that is all, thank you.

THE CHAIRMAN: Then we thank you, Mr. Armstrong.

THE WITNESS: Thank you, sir.

THE CHAIRMAN: Next.

MR O'DONNELL: My lord, I arranged with Mr. Fairweather that he should be here and be available for such questions as may be put to him concerning this same matter, and there are possibly one or two questions that I might put to him myself; but generally he is here for the convenience and the information of the Commission and any who are interested in this particular subject.

S. W. FAIRWEATHER, Recalled.

EXAMINED BY MR O'DONNELL:

Q. Mr. Fairweather, I might ask you this question with respect to the last question and answer which the Commission has just heard from Mr. Armstrong, and with respect to a similar question which was put to him on the 28th of April last, which appears in volume 116 at the top of page 21040. I think possibly the Commission might be interested in your views on that matter. The question and

answer to which I refer as follows, the question being put by Mr. Spence to Mr. Armstrong:

"Q. In your opinion, Mr. Armstrong, is there opportunity for further co-operation between the two major railways?"

And Mr. Armstrong's answer was as follows:

"A. In my opinion, some further opportunities for co-operation between these major railways may be discovered in the future, but I doubt that under present traffic conditions such co-operation can attain to further estimated joint net annual savings equal to those listed for the co-operative projects now in effect."

Have you any views on that matter, Mr. Fairweather, that you could give the Commission?

A. Well, I would not want to be dogmatic on that. I do not think that it is possible for anyone especially speaking for one railway to estimate in dollars and cents the scope of future co-operative activities. I personally feel that the field is a fairly large one and that substantial economies are possible. I would not want to say by how much they might exceed the estimated economies so far achieved, but I would say that I believe that the field of co-operation is substantial enough to be very carefully explored, and it is one of the managerial fields available to railways in meeting their present-day troubles.

THE CHAIRMAN: Mr. O'Donnell, can you tell me when the last co-operation project was agreed to and what it was?

MR O'DONNELL: I cannot offhand. The one referred to the other day was Alix-Nevis, in Alberta, October 18, 1948; it is referred to at page---

MR MACPHERSON: I think, Mr. O'Donnell, it was 1948 before it finally became effective, but so far as

committees were concerned, my understanding from Mr. Armstrong was that it was in 1935. In 1945---

MR O'DONNELL: That may be. I had forgotten that. Maybe Mr. Fairweather remembers.

THE WITNESS: I think the fair answer to that is that co-operative projects continued to be studied at the level of the Joint Co-operative Committee up to or shortly subsequent to the outbreak of the war in 1939. At that time the managerial problems became so much one of war effort that co-operation by mutual consent was just put to one side. In the post-war adjustment period managerial problems were also of such magnitude that by common consent co-operation was not a matter for immediate study. So far as the Canadian National is concerned, I can say that that phase is now drawing to a close, and attention is being paid to the field of co-operative economies as part of the managerial problem.

MR O'DONNELL: Q. Reference was made the other day, Mr. Fairweather, to the Langdon-Beiseker arrangement in Alberta---

THE CHAIRMAN: What page is that?

MR O'DONNELL: That is at page 134 of Part I of the Canadian Pacific brief. I use that for convenience, by reason of the fact that it was previously referred to at that page.

Q. Is there anything that you could say to the Commission concerning that?

A. Well, there may be a difference in point of view there between what I understood to be the Canadian Pacific position judged by the evidence given here and the attitude of the Canadian National. The Canadian National was requested by the Canadian Pacific for good and sufficient

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reasons to defer any further consideration of this matter until certain traffic features cleared up, and that is still our position. We feel that that Langdon-Beiseker affair should be gone ahead with. We are willing to defer consideration of the preparation of the agreement until such time as it is reasonably certain that the abandonment will not work an undue hardship to the community affected, but it is our view that that Langdon-Beiseker matter should eventually be dealt with and the abandonment made effective.

Q. And you think that the time during which you agreed that it might be held in abeyance is near a close or has reached a close?

A. Well, actually, you see, the situation is this: This is one of those things that has been allowed to stand on the side because more pressing problems were being dealt with. We were in the middle of the war -- I think it was 1941 when the Canadian Pacific made that suggestion, and certainly in the hurly-burly of the war there was not much object in pressing the matter, particularly since the facilities were of some use, and since the war we just have not got around to it.

Q. The next one on page 134 is the arrangement concerning the Forth-Ullin, Alberta, project, line abandonment. Have you any comments on that?

A. Well, that is somewhat similar. It is the view of the Canadian National that that abandonment should be proceeded with.

Q. Now, mention was made of the arrangement concerning the Calgary-Edmonton-Vancouver pooling which presently applies only to grain traffic. Have you any views concerning that matter?

A. Well, I think I might mention that that particular

arrangement was, so far as the Canadian National was concerned, a rather experimental matter. We knew that there was this opportunity of avoiding extra haul of freight, and we had under consideration some general plan whereby these longer hauls by one road to maintain its competitive position in a certain territory might be ameliorated, and we had a fairly ambitious scheme whereby there would be a particular type of manifest that could be issued as between the railways, and it would apply generally wherever one railway could handle traffic with an economy as compared with the other without destroying the competitive position of the solicitation, that between the railways there might be a manifesting of this traffic over the other road, with an account kept of the economy. Undoubtedly such an ambitious scheme does have difficulties in it, and when the opportunity arose out in this particular area of doing something very simply -- that is, simply swap car for car of grain -- we were very glad to go along with it. I think myself that the principle might very well be extended; I think it is one of the joint co-operative ventures that has in it elements of fairly substantial saving.

Q. Do you see any objection to making the agreement apply to all traffic, not alone to grain traffic?

A. No, I do not. I am frank to admit, difficulties of one kind or another might be faced, and you would have the problem of cost accounting to balance the excess service rendered by one company against the benefits and the expenses, but I do not consider that to be insuperable.

Q. The over-all burden of transportation cost to the country might be reduced by extending the pool to all traffic, in your view?

A. Such an arrangement as I have sketched out I think

would produce fairly substantial economy in various parts of Canada.

Q. Then speaking of this Calgary-Edmonton-Vancouver?

A. Well, in this particular case that is an outstanding instance; that is an outstanding instance.

(Page 21196 follows)

Q. Just one other word. His lordship, the Chairman, I think, asked Mr. Armstrong if it was possible that truck competition had produced the over-night freight service between Montreal and Toronto. What are your views on that matter -- to the benefit of the shipper of course?

A. That over-night service between Montreal and Toronto, as I understand the Canadian National position, was brought about from the desire to meet truck competition, and truck competition has had some curious side effects. Long before this Joint Co-operative arrangement was ever thought of, the railways did undertake certain measures of co-operation designed to avoid wasteful competition. A curious instance that I might relate is that in this Montreal-Toronto l.c.l. situation, the railroads agreed in the days before truck competition, that they would close their freight sheds at a stipulated hour, thereby avoiding expense, and they worked out a very nice arrangement. Each railway would send a representative down to the other fellow's shed at the closing time to make sure that the shed was closed. With truck competition this arrangement was not feasible, and we simply had to step up the speed of our freight train service, and we had to keep our sheds open and all sorts of things. It added to expense and, as I pointed out in my previous evidence, the competition was uneconomic. Every truckload of l.c.l. traffic which is transported by highway is transported with a lack of economy as compared with transporting it by rail.

MR. O'DONNELL: Those are the only questions I have.

THE CHAIRMAN: Any other question to Mr. Fairweather?

CROSS-EXAMINATION BY MR. MacPHERSON:-

Q. Two or three questions. Mr. Fairweather, at page 153 you say that the Joint Co-operative Committee has recently been revived, that is, page 153 of the Canadian National Submission?

A. Yes, sir.

Q. When was it revived?

A. Oh, I could not give you the exact date, but it was sometime within the last -- I think about a year.

Q. About a year ago. Now, just to clear up one point, Mr. Fairweather, we have the three Committees functioning. There is the Local Committee, the Joint Co-operative and a Joint Executive?

A. Yes, the Local Committees are ad hoc Committees, you understand.

Q. Now, of those three Committees, the Joint Co-operative Committee is the Committee, I presume which will initiate projects?

A. Yes, it also of course takes direction from the Executive Committee.

Q. Yes, but which in the last analysis has to do with the initiating, the joint Co-operative or the Joint Executive?

A. Well, let us put it this way. The Joint Executive has instructed the Joint Co-operative to investigate such broad lines of co-operative economies, and the power of initiation substantially rests with the Joint Co-operative Committee.

Q. Now, is there a clearing from level to level? If the project is initiated, we will say, by the Joint

Co-operative, it is referred back to the Local Committee; it does not have to be agreed upon by that Local Committee?

A. Oh, no.

Q. They report to you, to the Co-operative Committee?

A. Local Committees are working Committees; they are ad hoc Committees set up to collect data.

Q. Then so far as the Joint Co-operative Committee is concerned does it have to agree on a project before it comes to the top level?

A. Oh, not necessarily. If either agree, in which event they make a recommendation, or - -

Q. They report?

A. They report dissent.

Q. Then it is dealt with by the Joint Executive Committee and it is either agreed to or referred back to the Joint Co-operative Committee for further study.

A. Well, I don't know what the Joint Executive Committee would do in the circumstances. Sometimes they have referred matters back, sometimes they have accepted our recommendations.

Q. Are there some times when you have heard nothing further at all from it?

A. Well, I would have to review the records very carefully before I could answer that question. You know, the things you are asking me about occurred fifteen years ago or more.

Q. What I am trying to get at is, there has not been any reference of a single disagreement to the tribunal?

A. Yes.

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Q. And I wondered if the Joint Executive Committee, in order to avoid the disagreement, had either agreed or referred it back to your Committee for further study?

A. Well, you must keep this in mind, sir, that the Joint Co-operative Committee is itself a working committee.

Q. That is right,

A. We are a working committee at a higher level, but we are in no sense a policy-making committee. All policy matters are at the Joint Executive level, and the Joint Co-operative Committee would have no knowledge whatever of what took place in the Joint Executive Committee except to the extent that the Joint Executive Committee might refer something back for further study.

THE CHAIRMAN: We will have to adjourn now.

-- The Commission adjourned at 1:00 p.m. to meet again at 2:45 p.m.

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Ottawa, Ontario,
Monday, May 1, 1950.

AFTERNOON SESSION

S. W. FAIRWEATHER, Recalled.

THE CHAIRMAN: Very well, Mr. MacPherson.

MR MACPHERSON: There is just one other question I wanted to ask Mr. Fairweather, Mr. Chairman.

CROSS-EXAMINATION CONT'D BY MR MACPHERSON:

Q. As you know, Mr. Fairweather, in two of the provinces, Manitoba and Saskatchewan, there are provincial regulations that control the freight rate that trucks are to charge?

THE CHAIRMAN: What two provinces?

MR MACPHERSON: Manitoba and Saskatchewan.

THE CHAIRMAN: It iDoes not British Columbia too?

MR MACPHERSON: Parts of British Columbia, I think; not all of British Columbia.

MR BRAZIER: I think, generally speaking, where there are licensed lines in British Columbia the rates are controlled too.

MR MACPHERSON: Where there are licensed lines in British Columbia, I think. I do not think it covers the whole province. But with both Manitoba and Saskatchewan, my lord, it covers the whole province, and I wanted to find out from Mr. Fairweather whether in his opinion this was an assistance to the railways or otherwise.

THE WITNESS: I think it undoubtedly was designed to be of assistance. My personal opinion is that it is not much assistance.

THE CHAIRMAN: Q. It is not what?

A. It is not much real assistance to the railway. I think the proof of that will be found in the situation as it has developed in England and the situation as it has

developed in the United States. It is so easy to evade the regulations as applied to large shippers; they can always ship in hired vehicles as distinct from sending their goods via a highway operator. The regulation of trucking rates by the provinces is not really of much assistance to the railway in this basic problem of uneconomic competition between the two forms of transportation.

MR MACPHERSON: Q. It is your opinion, I believe, Mr. Fairweather, that in both of these provinces -- I do not know about British Columbia so much, but certainly in Manitoba and Saskatchewan -- the collection of those rates by truckers is pretty well policed by the provinces?

A. I know it is attempted to be policed, yes.

Q. And you do not believe that the fact that, if it is well policed, it eliminates cut-throat competition is of assistance to the railways?

A. Well, I think that actually probably is of more harm than help, because the cut-throat competition damages the trucker a lot more than it does the railway. These truckers always operate under an umbrella of rates that are set by the railway, and even in these provinces where rates are regulated the rates are closely related to the railway quoted rates except on bulky commodities that are difficult to handle, and there the rate is away above the railway rate. But, you see, the effect of that is that the trucker operating a high-cost service under what I might refer to as the umbrella of the railway rates, is more apt to expand his activities than he would be if he had to face the cut-throat competition from other truckers. It gives him a wider margin of profit that he can use to expand his operations. So that rate regulation at railway rate level is not an answer to this problem.

Q. I just wanted your opinion on that, Mr. Fairweather, thank you.

THE CHAIRMAN: Anybody else?

COMMISSIONER ANGUS: Q. Mr. Fairweather, there is one question I should like to ask; it arises in part from your evidence today and in part it has to do with the Canadian National submission. The question itself is going to be short, but I want to begin by giving my reasons for asking it.

If we take the evidence that has been presented to the Commission as a hundred per cent serious and as complete, a complete story, to which we do not have to add a few grains of salt, we get this sort of picture: In a large and increasing sector of the economy there is not a monopoly of transportation, because of water competition or truck competition. On the other hand, in some areas there is only one railway, so that you have a railway monopoly in any case. The benefits of the competition between the two railways seem to be rather nebulous things; we have had very great difficulty in getting any precise information as to benefit conferred on consumers or shippers by competition between the Canadian National and the Canadian Pacific Railways. The part of the economy that is served by two railways has been represented by people who denounced the monopoly of the railways in the plural, so sternly that it is rather difficult to think that they have any dislike left over, as it were, for a monopoly by one railway in the singular. They dislike the monopoly rates that apply to their type of traffic.

Now, side by side with that, this other point: The Canadian National Railways have put a very modest estimate on their potential earning power; on the average we are told that there is to be a surplus over operating

costs, a surplus available for fixed charges, of \$15 million or thereabouts. There may be a little to add to that from further economies under the C.N.-C.P. Act, and there may be a little to add from income tax payments in years when more money is earned, but what the taxpayer is getting, assuming that the fixed charges are being borne by him, is not very much more than \$15 million on the Canadian National Railways' estimate. Now, the Canadian Pacific puts a much higher estimate on what the Canadian National Railway can earn at the proposed rate level, that is to say, at a level that is fair to the Canadian Pacific and that redresses the imbalance of rates and costs.

Now, that is a picture in broad outline, and if we take that as the picture there is one obvious solution that suggests itself, and it is so obvious that I think the Commissioners might feel a little humiliated by the simplicity of the problem that has been propounded to them. The solution would be to invite the Canadian Pacific to show its confidence in private enterprise and in the evidence by agreeing to release the Canadian National Railways for something more than \$15 million a year, on appropriate conditions, and of course the dominant condition would be the yardstick for freight rates.

Now, superficially that solution would have all the merits. The Canadian taxpayer would make the best possible bargain, the Canadian Pacific Railway dividends would be made fairly secure, and the cost of railway operations in Canada would be reduced by the greater economies that you can have from fully-integrated operations, carrying co-operation to one hundred per cent.

To avoid that solution, if it is distasteful, the taxpayers have to forego relief, which they are said to desire, the shippers and consumers have to pay freight rates

which they say are too high already, and which I think your evidence has said cannot be raised remuneratively to the railways, rates which they are unwilling and perhaps unable to pay.

Now for the question: From your long experience of railway economics, do you think I am taking that evidence too seriously?

A. Well, sir, I think that you are under-estimating the competitive angle. I gathered from what you said that you believed that before there could be the benefits of competition a shipper and a receiver would have to be located within reach of each of the railways concerned. Now, that is far from being so. The benefits of competition between these two properties extend to every shipper, wherever he is located. The railway -- and I can speak with some knowledge, because I am the Chief Development Officer of the Canadian National -- always has before it the problem of protecting the market position of its patrons, and a patron that is located on its exclusive line is just as much in need of that protection as if he was a competitive shipper. Now, the fellow who is located in the position where he has a competitive alternative, let us say, has some protection against arbitrary exercise of power by the railway, but he has no greater need for market protection than the other man. And, speaking for the Canadian National Railway, I can say most positively that the Canadian National Railway looks with the greatest care at the problem of seeing that its non-competitive shippers are placed in a competitive position in all markets that they can reach.

Now, that extends in the whole gamut of railway management. It starts, of course, with the rate structure. It then extends into the quality of service that is rendered

to that shipper, and the freight schedules, and nearly all of our freight operates on schedules. Those freight schedules are just as carefully adjusted to meet the requirements of this individual shipper as they would be for the competitive shipper. So the benefits of competition extend so far as the shipper is concerned all over the country.

Then in so far as the internal problems of management are concerned, from a very long experience I am convinced that the esprit de corps of two competing organizations has a very tangible value.

Now, this may sound like a digression, but when I was a young man, a young engineer out in the field, I conducted an experiment, and I think it will indicate what I am talking about. I was an inspecting engineer on a relatively small job, where they employed about I suppose 150 men. We were getting a certain output per man operating under one general foreman. I went to the contractor -- I was rather a student of matters like this -- and I said to him, "Why don't you put on two foremen and split this job into two pieces?" He said, "Oh, that would be foolish. I would have to pay another foreman's wages." Then I said, "Well, are you game to try it and just see what happens? Don't do anything else, just put on another foreman and split the gang in two." We had quite a discussion about it, and he agreed to do it.

Now, I want to tell you the most astounding result. That man's costs on that particular job went down better than thirty per cent. There was a spirit of emulation set up between these organizations, and they worked unconsciously in a spirit of emulation, one for the other or against the other, and the contractor learned that there was something more to management than just simply the

provision of men and material. You do not simply pour men and material into a sort of sausage-mill and get a result out. Organization is a living, vital thing. The organization of a great industrial enterprise like the Canadian National almost has a soul of its own, and the instilling into management, and through management into the personnel of the railway, of the soundest principles of production, can only proceed so far. You have got to have some sort of objective yardstick that is always in front of the individual before he will respond with his best effort.

Now, in this particular instance that I mentioned, I can guarantee there was no slave-driving at all; they just stood to one side and watched the results. And I do maintain with great sincerity that the competition which does exist between the Canadian National and the Canadian Pacific Railways is very beneficial in the hard, common-sense school of cost per unit of service performed. It is not all waste, and if you try to translate into economies what appear to be duplications in service, you run a grave risk of upsetting those yardsticks by which the individual guides his actions.

Why does a train run on time? Why is a snappy performance given in a yard? Why does a shipper get preferred attention? Mind you, the President of the railway may issue a ukase to that effect, but in each and every instance that has to be performed by an individual who has an interest in his work, and the prime interest in his work, in my observation, is that he has a competitor. That, sir, I think, answers a large part of your question from my point of view.

Now, I don't know that I can hold all the phases of your question in my mind, but I do feel that the capital reorganization which the Canadian National asked was

really designed to sharpen up that instinctive pride of the individual in the performance of his work. If it does not do that it does nothing; it is only bookkeeping if it does not do that. But I maintain that to give the Canadian National an objective that is going to take some striving to get to, but is still reachable, is going to be a challenge to the management of the Canadian National, and will in my opinion have the result of lowering transportation costs in this country.

Q. I am not clear about one thing in that answer, Mr. Fairweather, and this is this: Do you think in the past that the competition between the two railways has produced the esprit de corps in both of which you have been speaking, or do you look on that as something to be produced in the future by this new capitalization proposal?

A. It has always existed, and, to the degree that leadership is furnished in the consolidated Canadian National Railways, it has been preserved and fostered. We have in the last say thirty years been gradually moulding the Canadian National Railways into a unified system with a common esprit de corps. When I first joined the system you were either a Grand Trunk man or you were a Canadian Northern man or you were a Canadian Government Railway man, and then as a sort of stepchild you might have been a Grand Trunk Pacific man. The big problem that the system faced was not the physical co-ordination of its activities; it was the creation of a co-ordinated organization having a common objective. And Sir Henry Thornton did a very fine piece of work in bringing down the insularity of the component parts of the organization and giving us a unified team action.

Now, I would not have you feel that along with

these beneficial phases of competition there have not been evils, because in the period of the twenties there certainly was competition that in my judgment was not sound, and it resulted in the Canadian National-Canadian Pacific Act.

One of the best features of that Act, in my judgment, is its negative aspect, where it gives each railway a protection against aggression without the necessity of leading this country into an extravaganza of competitive effort.

Q. Then you would be giving full value to the good and increasing morale when the figure of \$15 million was chosen?

A. Well, as I said, sir, I do not feel that the Canadian National would be doing a good job if on the average it only succeeded in earning \$15 million over its operating expenses. I say there is a challenge there. Statistically one might say that the \$15 million figure is -- well, it is the lower limit, but there is a challenge to increase it, and I think that challenge is a very valuable thing. I would not want to say that I would be happy if ten years after today we looked at our accounts and saw that we had only averaged \$15 million. I would say that we would not feel that we had done any more than an average job if we did. But the railway future is dark and there are obscurities in it. Certainly there is in this highway problem a major canker that is eating at the heart of the railway industry.

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Now, to the extent that that erosion can be stopped by prudent measures without any damage to the overall economy of the country, you will alter the picture very considerably.

COMMISSIONER ANGUS: You don't want the challenge pointed up by a more elaborate capital structure?

A. No, sir. I think to keep at a simple structure, that is a challenge to us. That is the thing that I feel would be the most productive of what the Canadian National management is aiming at, that is, the stimulation of the spirit of the employees of the system so that when the year's result is out they can pat themselves on the back and say: "We have done a good job; there we have done something."

MR. FRAWLEY: Q. Mr. Fairweather, you have just been telling the Commissioner that you are always anxious to see that a shipper located on an exclusively Canadian National line does not suffer at all by that fact but really gets some real benefit from that fact?

A. Yes, sir.

Q. Have you got the same solicitude for the receiver on a Canadian National exclusive point?

A. We certainly have.

Q. Now, Mr. Fairweather, this is a fair question. Why do you let the receivers of cement in Alberta on Canadian National exclusive lines pay more for their cement merely because it originates at an exclusive Canadian National point?

A. Well now, that is a matter of the rate structure. We have in Canada basically the one-line rate structure, and if there is a movement

from an exclusive point on the Canadian Pacific to an exclusive point on the Canadian National, there is an extra in there because it is on a two line-rate base. That has been an accepted principle throughout the whole history of the railways.

Q. Mr. Fairweather, not to spend too much time on this, but perhaps under the heading of co-operation we might discuss it. I am told that the fact is that when cement originally started to go from Exshaw into Alberta in large quantities, the directions were to take them as far as Calgary, the first Canadian National interchange point, and then turn it over to the Canadian National there if it was going to a Canadian National destination. That was not explained to and the Canadian Pacific, and they sat down with you people and came back, and the result is now that it is a two-line rate structure that we are now operating under, which makes the receiver on the Canadian National point pay more than the receiver on the Canadian Pacific points situate just exactly the same number of miles from Exshaw.

A. Of course it works the other way. There are ever so many instances where the thing is just the reverse.

Q. You treat the exclusive Canadian Pacific receiver in the same fashion as your exclusive Canadian National shippers are treated?

A. Yes, certainly, and shippers too. That is just plain business.

Q. In other words, Mr. Fairweather, you have the same situation at points like Arvida, I suppose, as the Canadian Pacific has at Exshaw, Alberta?

A. Surely.

Q. Has that ever been the subject of any discussion between officers of the railway to see whether or not there could be some evening up there?

A. I don't know what evening up there would be. Actually you are now on a subject about which I don't know very many details, but I do know that our rate structure is built up ^{fundamentally} on a one-line and a two-line basis, and I think it is justifiably so built.

Q. I just leave it this way then, and I will take two specific points. You think there is nothing objectionable or wrong at all when we find a receiver of cement at, say, Mirror in Alberta, which is an exclusive Canadian National point, has to give up his business because a man a few miles away at Alix, which is a Canadian Pacific point, is able to take all the business away from him, seeing that he has to supply this cement in Mirror, the Canadian National point. Do you think that is all right?

A. All I can say is that the railways cannot conceivably cover every possible circumstance with which the economy of the country might be confronted, but I do say this two-line rate basis has the sanction of long history, and I am not going to say that it is not justifiable. I think it is justifiable.

Q. Now, Mr. Fairweather, I was asking Mr. Armstrong this morning about the exchange of grain in Edmonton and Calgary respectively, and I wanted to ask one question about it. There is generally, as a result of that agreement and because of the limited number of originating points which the Canadian National has compared to the Canadian Pacific, particularly when

you take 50% of the Northern Alberta grain, there is generally a great balance in favour of the Canadian Pacific at Edmonton for interchange. Is that so?

A. Oh, I believe so.

Q. Do you find that the Canadian National is casual or insistent about taking their share of that grain, their excess share and taking it to Calgary for furtherance to Vancouver?

A. I would not know as to that, but what I can tell you is this, that the Canadian National management is very much alive to the economies involved, and we see to it, the way we herd into Calgary by which we can save a haul.

Q. Then you have never had an instance where you had an excess and where you have been faced with the possibility of sharing your grain up to Goose Lake running up into Edmonton for travel to the coast?

A. So far as I know that has never arisen.

Q. But similar circumstances do arise where the Canadian National where they have an excess of grain at Edmonton, they do send it down to Calgary for furtherance to Vancouver.

A. I can only speak of that by inference. I know there is a great deal more grain made available at Edmonton for shipment by Canadian Pacific than there is at Calgary on Canadian National.

Q. That is true. That being so and on a car for car basis, Canadian Pacific must be taking a lot of grain down to Calgary rather than turning it over to you at Edmonton?

A. I said that was a logical inference, yes.

Q. Has it ever occurred to you that that would seem to be an inconsistent position for them when this whole movement is unprofitable?

A. Well, as I said this morning, this particular arrangement was in the nature of an experiment, and it was the intention to follow the experiment up and see then whether it might not be broadened in some manner. There are difficulties undoubtedly, but speaking for the Canadian National I can say that we looked upon it as an experiment in what seemed to us to be a fairly fruitful field of economy.

Q. Well, the experiment has been following on for 17 years?

A. I know, but you must remember, sir, that I stated that during the war and in the post-war period managerial problems were pushing in on us that made this matter relatively unimportant, and you had to give first things first consideration.

Q. What is the situation with regard, to the extension of that grain agreement to livestock and other freight?

A. Well, I think that it would very well repay study. I would think that livestock would introduce special complications, because livestock requires special servicing and routing, and our responsibility under our bill of lading, I don't know whether we could delegate it or not. But I think the whole subject is worth study, sir.

Q. I would have thought now, not knowing as much about the movement of livestock, the fact that you have this extra service would rather warrant the

stock on northern branches of the Canadian Pacific being turned over to the Canadian National and getting out to the coast as quickly as possible rather than herding them all the way to Calgary before they are sent out to the coast?

A. Well, as I say, sir, I think it is well worth study, but I don't want to give an offhand opinion. I think that a study could very well reveal that it would be a practical measure.

Q. Mr. Fairweather, is it either of the railways' faults that the tribunals have never been used under this Statute?

A. Well, that puts me in a position of criticizing, for instance, my own executive, and I cannot do that. It is perfectly obvious that if I said "Yes" then I am either accusing the Canadian Pacific or accusing my own executive. All I can say is that the situation, as it developed from time to time so far as the Canadian National is concerned, was brought to the attention of our executive and they took such action as they deemed fit.

Q. Is it not remarkable that there has not even been one, not even one reference to an arbitral tribunal?

A. Well, I don't know that it is remarkable: it is a fact.

Q. Doesn't it indicate a definite policy that there will not be any reference to these tribunals?

A. Oh, I say most positively that it does not indicate any such policy.

Q. And there never was any such policy?

A. So far as I know there never was any such policy. I never heard of it.

Q. When you speak of policy I don't mean a memorandum signed and issued.

A. And I am fairly well informed. I have not the slightest reason to believe that there was any such policy.

Q. It is inevitable in all the cases that it never got to the tribunal?

A. I take it the executive from time to time (I am speaking now of the executive of the Canadian National) examined the situation as it existed and made up its mind that the situation did not call for an arbitral tribunal. That is all I can say.

Q. Do you agree with Mr. /Armstrong's view, because at least he has a view, that if that tribunal had been resorted to there might not have been so much tendency in the minds of the executive to feeling that the other people were not just co-operators and it would^{not}/have a deleterious effect on future relations?

A. No, so far as I am concerned, no. The Canadian National sees that arbitral provision in the Act as a useful implement. It has two values. One is a negative value and one is a positive. There is the protection against aggression by one company against another, to the sort of invasion of its territory that took place in the 1920's. Had that Act been on the Statute book it probably would not have taken place. The positive side of it, there is provision for implementing economies. I certainly cannot believe that

you would invoke the arbitral tribunal on any minor matter, but on a matter of major importance there is the machinery, and the Canadian National certainly, as a matter of policy, would make use of that machinery if the circumstances warranted it.

Q. Do you think, Mr. Fairweather, that the one million dollar savings which appear in the submission of both roads to this Commission, is an adequate result of the enactment of this legislation by Parliament?

A. I have already said - -

THE CHAIRMAN: Pardon me, do you mean the million dollars annually? Isn't that what the estimate was? It is an estimate?

MR. FRAWLEY: Yes, it was an estimate we were told about, and I think it is something like - -

THE WITNESS: 1,189,000.

THE CHAIRMAN: Annually?

THE WITNESS: Annually.

MR. FRAWLEY:
Q. That estimate is on the grain, which is quite a big lump of it, \$60,000, and is just \$6,000 multiplied by ten -- pretty much of a horse-packed figure isn't it?

A. I would not call that a horse-packed figure. It is, let us say, an approximate figure, but it is certainly based on an analysis of the costs involved via the two roads and a fairly careful analysis at that.

Q. It costs about \$10 more to take it over the Canadian Pacific main line than over your main line?

A. Yes, and I think if you look at the thing today you will find the cost is nearly \$20 extra.

Q. Different?

A. Yes.

Q. But the Canadian Pacific are still taking these excess cars down to Calgary and taking them over Kicking Horse Pass?

A. Yes.

Q. Now, Mr. Fairweather, do you not think that this Statute could benefit from some policing by a third party, some regulatory body?

A. Well, of course, there is policing by Parliament, to the extent that Parliament is interested in it.

Q. To the extent that Parliament gets a report each year under Section 14?

A. Yes.

Q. By the way, Mr. Fairweather, do you have handy those reports?

A. No, I have not.

Q. Or a sample of them? Are they included in the annual report of the Canadian National or is there a separate report made under Section 14?

A. Well, any significant item would appear in the various annual reports of the Canadian National.

Q. I see. I am not being critical, but you have never actually made a separate report called a report under this Statute, as called for by Section 14?

A. Well, I would not be sure of that. You see, at the time these co-operative measures were active, it is a long while ago and I would be speaking from memory.

Q. But you are Chairman of the Canadian National Section?

A. Yes, but the publication of that report would

not come to me..

Q. No, it is the trustees, it is called the trustees. That has not been changed?

A. That would be the Board of Directors.

Q. Now becomes the Board of Directors. In any event, so far as you know about it, you don't know that there is any separate report made under Section 14 to Parliament?

A. At the moment I know of no such report.

Q. Then such as it is always bringing to the attention of Parliament, that is the only policing there is?

A. Yes, and your question is whether I think - -

Q. The whole operation of the Statute would benefit by having some policing, and you could use the word "policing" in the highest possible sense you wish?

A. Well, yes, I understand your question. My feeling is this, that the railway industry is going through very difficult times, and they cannot afford to overlook opportunities for reasonable and sensible economies. I think that is the best policeman that you can possibly have. Now, I draw the distinction between a policeman and the obtaining of information. The Canadian National Railways was the first railway, I think, certainly in Canada and I think on this continent, to have a Bureau of Economics or a Research Department. Our success in setting up such an organization led to the Canadian Pacific setting up a Research Department and also to having an Economic Branch set up by the Board of Transport Commissioners.

Now, all of those facilities provide machinery for informed examination of railway problems, and I think that is all to the good.

Q. Just let me ask you one more question by way of specific suggestion.

COMMISSIONER INNIS: Would you rather have it under the Board of Transport Commissioners, Mr. Frawley, as the supervisory body? Or have you anything in mind?

MR. FRAWLEY: I have an easy mind whether it should be a separate tribunal or a branch of the regulatory body. I go along with the C.F.A., but it does not matter. Dr. Hope did not state whether it was a separate tribunal. It is true he did say a continuing tribunal. Perhaps one would think from that that he meant a newly constituted body.

THE CHAIRMAN: Are you to have any legislation drafted for us, putting that forward?

MR. FRAWLEY: Well, the Canadian Federation of Agriculture did not draft any, and at the moment I have not intended to, but it will be a simple matter to draft something, sir.

THE CHAIRMAN: I don't know. It depends on what kind of body you are going to submit, and to what extent its findings would be binding on everybody,, including the public and the Board of course, and so on. There is a great scope left there for differences of treatment, differences of opinion. You will tell us later on in the argument precisely what you think ought to be done.

MR. FRAWLEY: As to what should be done, yes, sir. I don't know whether it would assist the Commission also to submit something in writing by way of amendment to the Railway Act, or to this Act rather. I might do that too, sir.

COMMISSIONER INNIS: You would be content if it was under the Board of Transport Commissioners?

MR. FRAWLEY: Yes, but not the Board as they are now, a bigger and better Board.

THE CHAIRMAN: It simply means that the public in different localities to the mere interested parties, come forward to show why these recommendations ought not to be adopted. Then are you making any other proposals?

MR. FRAWLEY: The only thing that we can put forward about the third party being interested would be that it would not be left entirely to the railways themselves. Mr. Fairweather has just said with perfect sincerity that he is trying economy as far as is sufficient.

THE CHAIRMAN: That is what the Act says. The Act calls upon them to co-operate in order to effect economies and to provide for more remunerative operation. That certainly supplies two incentives to spur the railways on.

COMMISSIONER INNIS: You think this additional statistical work that Mr. Fairweather was talking about, might make it possible for the Board or a branch of the Board to interpret or untangle complexities that were put before us this morning?

THE CHAIRMAN: You see, Mr. Frawley, what I have in mind is this, that after all, whatever this body is called, whatever its power is, it must direct itself

to finding out things that would be of economic value to the railways.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Because that is what the Act calls for, for the purpose of effecting economies and providing for more remunerative operation.

MR. FRAWLEY: Yes, of the railways.

THE CHAIRMAN: Yes.

MR. FRAWLEY: I know, and I do submit that is only a means to an end. It is to the end to get expenses down.

THE CHAIRMAN: You see, anything that provides more remunerative operation must be beneficial to the railway.

MR. FRAWLEY: That is true, because it lessens the need for further increases in freight rates.

THE CHAIRMAN: If the railways themselves cannot see their interests, whether they can make up their minds about it, do you really think that an outside body could say to them: "Here, you would make so much money if you did this and that, you would be much better off and save so much money"?

MR. FRAWLEY: Even if that outside body - -

THE CHAIRMAN: You see, that is the object of this Act. You must not extend it to anything else. It says for the purpose of effecting economies and providing for more remunerative operation.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: It is not anything else. It does not say they are to give the public better

service, but those are the two objects right in the Act.

MR. FRAWLEY: My position is that surely there would be bound to be benefits from such a body, if for no other purpose than to get things done. I don't want to overstress this case of Alix and Nevis. All I am saying is it is a shocking state of affairs when it comes to 13 years' ^{operation of} 9½ miles of track. I don't want to make more than should be made of it. It seems to me that if there were some body to watch these things and have some finality brought about, that that should be done. As to the case of the rate basis in Alberta that I appeared in briefly, the Canadian Pacific won the case, or the railways did. I thought the list would be out next year. Now we are told it is not so. I cannot complain about that, but I am using it to illustrate. What was the point of it all? There is something lacking somewhere it seems to me.

THE CHAIRMAN: It could be that since then the railways have discovered that eliminatinn of that particular line would not effect economies.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: Would not give more remunerative operation.

MR. FRAWLEY: That is right.

THE CHAIRMAN: Always remember that that is the object of the Act, that it is something that is intended to benefit the railways by giving them a chance to make economies and to earn more remunerative operation.

MR. FRAWLEY: That is true. Well, the public have an interest and so have the Board too, because

the more money they make the less we have to pay in freight rates.

THE CHAIRMAN: Can you easily imagine both railways sitting back and saying: "We don't want to earn more remunerative operation, we don't want to save any money by economies". You cannot imagine that?

MR. FRAWLEY: Oh, no, that is not to be imagined.

THE CHAIRMAN: Think of all these things before the final and last word is said on this subject.

MR. FRAWLEY: Q. I only want to call attention to one more matter. As an example of something that might be given thought. Both Canadian National and Canadian Pacific originate fruit in the Okanagan country?

A. Yes.

Q. That is moved into Alberta?

A. Yes.

Q. You have a Calgary destination for a good deal of your fruit?

A. Yes, sir.

Q. And you bring that up to Edmonton and bring it down to Calgary?

A. Yes, sir.

Q. Wasn't there an interchange point (and it may be just a simple answer) somewhere in the Okanagan Valley so that fruit for Calgary or Southern Alberta, which is Canadian Pacific preserve, might be turned over to Canadian Pacific in the Okanagan rather than you take it up to Edmonton over your Yellowhead all the way down to Calgary before it is turned over?

A. That is a subject that is well worth study. It falls under the general heading that I mentioned this morning.

MR. SPENCE: Do you mean the shipper would not be available to Canadian National if he preferred?

MR. FRAWLEY: He would not have any chance if he was going to Calgary, that is what it meant, or Lethbridge, because Canadian National would have to take it to Edmonton and it is an expensive haul.

Q. You know, as a matter of fact, Mr. Fairweather, if you are alive to the traffic in Alberta, that they are as a matter of fact very harassed in Alberta on that particular question, and I am not taking it up on their behalf. I am putting it to you under this Statute as a likely means of expense.

A. Have I misunderstood your question. Your question was that we should not solicit traffic for Calgary?

Q. Yes, I think you could solicit it, but you would give it to Canadian Pacific to take it to Calgary for you.

A. Yes, I think that my answer was related to the thought that we would employ Canadian Pacific as an agent to handle the material from an interchange point somewhere near the Okanagan and hand it over to us again for final delivery to the consignee so that we would be initiating and terminating the movement. That was my thought.

Q. If it was for Calgary it would not be handed back to you because it would get to Calgary and after arrive at its destination?

A. Oh, it would be turned over to us at an interchange in Calgary.

Q. In Calgary, that is right. That is what I meant.

A. Under those conditions I think it is well worth study. Now, I intimated earlier that the bill of lading of course is a matter that has to be looked into, but I do not see that as an insurmountable obstacle. I think that is something well worth looking into.

Q. And in the same way for the Canadian Pacific to turn over to you at an interchange point in or near Okanagan for destinations which are in the northern part of Alberta?

A. Yes.

Q. From the St. Paul Line or something like that?

A. Yes.

Q. I have one more matter. You know that this Statute was the subject of investigation, among other matters, in the Senate Inquiry of 1938?

A. Yes.

Q. And I suppose you have read the report of the Senate?

A. Yes.

Q. And I just want to call your attention to two or three passages in the report which deal with the matter we are now discussing. That Senate Committee of 1938 found that the recommendations of the Duff Commission (and I am quoting) "have never in fact been applied in a practical sense". Do you recall reading that in the report?

A. Yes.

Q. And also that they found (and I am quoting again) "There is reason to feel.....".

MR. O'DONNELL: Where are you quoting from?

MR. FRAWLEY: I am not quoting from an original source.

MR. O'DONNELL: Are you making it up?

MR. FRAWLEY: No, I am not making it up. It has been quoted by the late Mr. Ralston, and I sure it is quoted properly. The Committee found (and I quote):-

"There is reason to feel that considerable economy could be secured from co-operation if it is approached earnestly and with a will to accomplish results".

You recall they also said that?

A. Yes.

Q. And they also found that the facts which had been brought to the knowledge of the public (and I quote again) as to the slow progress of co-operation planned to date "Have had a valuable effect in stimulating both railways to further efforts in this direction". That was a little bit on the other side of the page. Then from the final paragraph of that Committee's report, and this is all I have to quote you:-

"In the interests of the railways and business generally, further and more serious attempts should be made to give effect to the letter and spirit of the Canadian National-Canadian Pacific Act, 1933; that in the opinion of the Committee that offers the only

practical course in present railway difficulties". So the Senate Committee of 1938 was by and large pretty critical as to what had been accomplished under the Statute.

A. Well, I read their report.

Q. And I want to be perfectly fair about it, because I rather think you appeared there?

A. Yes, I certainly did.

Q. So you know a good deal about it. Is it fair for me to say, without generalizing too much, that they found rather against the results that had been achieved under the Statute?

A. I think the report speaks for itself.

Q. Thank you, Mr. Fairweather.

THE CHAIRMAN: Anybody else?

COMMISSIONER INNIS: I was going to ask Mr. Fairweather, when you were talking about the advantages of competition against the advantages of co-operation: the complaints on the part of employees of either Canadian National or Canadian Pacific about pool train arrangements and so on, are those justified or not?

A. Well, I suppose if you asked the men whether they were justified, they would certainly say "yes". Every economy the railway puts into effect means in the first instance that somebody goes out of employment.

Q. The point is made chiefly that the Canadian National or Canadian Pacific got the wrong end of the argument, and that the railway which is in opposition is looked upon as rather more astute than the railway in which they are employed.

A. Well, I have heard a great many of such

arguments, and naturally I have heard them more from the Canadian National side than the Canadian Pacific. I do not know much of what the Canadian Pacific staff thinks of it, but I was Chairman of a Committee to watch the results of this pooling, and it was reported to us that this, that and the other submission had been made about the unfairness of the pooling. As Chairman of that Committee, I said: "Produce the evidence to show us where this is unfair and we will get it rectified". I was unable ever to get any substantial evidence. What one got was a lot of prejudice, but you would expect to find that. I can say this, that that pooling arrangement is productive of very considerable economy, and I don't think that it is to any considerable degree out of balance in fairness to the railways. There is the wider question of how much you should extend the pool and where it should go and things like that, but that pool by itself I don't think could be successfully attacked as being disadvantageous to one or the other. Mind you, I would not want to go so far as to say that you could take a hair line right down and say that it is exactly this and exactly that, but it is beneficial to both companies.

Q. And consequently the complaints which are brought generally are merely prejudice?

A. I think they are largely prejudice. Of course when you get hold of such a nice thing as a pool of that size with such an economy, you naturally feel perhaps it should be extended. There might be views on that, but so far as the pool itself is

concerned, it was very carefully thought out to equalize the burden and advantage, and I honestly believe that it does that within a measurable degree.

MR. O'DONNELL: I might say, Dr. Innis, that I heard Mr. Gordon say just a few days back that he intended to look into those pooling arrangements and it might be a time to review them.

CROSS-EXAMINATION BY MR. BRAZIER:-

Q. Mr. Fairweather, you have been a member of the C.N.R. section of the Joint Co-operative Committee since the beginning, have you?

A. Since its inception, yes.

Q. Speaking of this passenger pooling, in both your brief and the C.P.R. brief, it shows the estimated annual joint saving as \$972,000?

A. Yes.

Q. Have you any information as to whether or not that would be representative of the conditions today or not?

A. I made a brief examination of the status of the pool, I would say about a year ago, and at that time it was showing substantial economies of that order.

Q. Of that order. You would think that that would be continued today?

A. I think it would be continued today. Mind you, I don't want to discount the evidence that Mr. Armstrong gave. During the war I doubt very much if there was any economy in the pool at all, because the trains were running in many sections, but whether

the fall off in traffic since the war the economy has re-established itself.

Q. And as that traffic falls off, if it does still further, you would expect the economy to be even more than it is at the present time?

A. Yes, that is true.

COMMISSIONER INNIS: Were there any losses as a result of the pooling arrangements?

A. Yes, we lost a little traffic. We had to figure on that. You mean during the war?

Q. Yes.

A. Oh, no.

Q. There was no extra cost for example?

A. No, there may have been a very slight economy there, because the pool trains between Montreal and Toronto were running over the superior double track of the Canadian National, and the pool trains between Montreal and Quebec were running over the superior track of the Canadian Pacific, so that I think there would be a slight residual economy anyway.

Q. I am just wondering whether there would not have been if they had been separate?

A. I don't think so.

Q. Because every ounce of passenger equipment was being used to its utmost. Remember, you have all this business of re-shuffling and apportioning.

A. You mean the accounting?

Q. Yes.

A. That does not amount to very much, because we paid a great deal of attention to that matter, and we rather pride ourselves that we worked out a pooling arrangement that handles millions of dollars of expense and millions of dollars of revenue with very little

accounting expense. We have adopted expedients there that are quite remarkable really. It broke new ground as a matter of fact. That is the only pool that I know of that operates with such a small accounting cost.

MR. BRAZIER: Q. Do you know the term for which that agreement is in effect?

A. Continues from year to year, subject to cancellation, I think, at a year's notice, or something like that.

Q. Would the Canadian National examine the situation each year?

A. We would examine it and have examined it from time to time. Now, that might be at intervals of a few months, or it might be at intervals of a few years. During the war we did not bother to look at it.

Q. Nobody had time?

A. It was obvious what the answer was, anyway.

Q. Now, one thing that rather surprises me on the surface is the fact that the railways were able to to put into effect this pooling agreement so quickly after the passage of the Act. Part of the pool became effective in 1933 and the rest in 1944. Could you tell me, were they just specific project in themselves at that time, or were they considered in relation to the pooling of all passenger traffic?

A. No, they were specific projects, at that time, and we picked out deliberately the projects in which the least conflict of interest between the parties existed, so that we could get together as near as possible before having to go into the minute detail of discussion.

Q. And at the same time, or that same period, you did study the question of pooling of all competitive passenger traffic.

A. Well, later, yes, we did, and we never came to a conclusion on it. We studied many passenger train pooling arrangements specifically, and always we failed to reach agreement, although I don't know some of them,

but I remember there was a substantial economy. Then we were in the process of taking a fresh look at the whole picture from the standpoint of a nation-wide pooling of passenger services when the war broke out and interrupted everything.

Q. And those that were shelved at that time, are they back now, receiving further study?

A. They are not at the moment under study, for the simple reason that other more important things have intervened, such as appearances before this Commission.

Q. And rate cases too?

A. Yes.

Q. Now, you say that there were other specific passenger operations which were examined and which showed on the surface or on paper substantial savings?

A. That is right.

Q. What would be the reason, the principal reason, they were not adopted when that was---

A. Well, it is a long while ago now, but anyone who wants to get a pretty good exposure of it, it is all laid out in the Senate/^{committee} investigation. I would not want to repeat the evidence here, because I am not sure that I would remember it all.

Q. There were different reasons for each project?

A. Oh, yes.

Q. There was not any lack of co-operation of one party or the other?

A. There was not any lack of study.

Q. On page 160 of the C.N.R. brief you deal with projects which have received study. As to one or two I want to know if you are continuing study at this time, or if it is your intention to continue. The second one listed on that page is the pooling of train and boat service of the Okanagan Valley.

A. Actually there is nothing at the moment that is under joint study, for the reasons I have stated.

Q. We can, then, say that this joint co-operative committee is not functioning at the present time?

A. As far as the Canadian National is concerned, all that we have done is, we have canvassed our local officers on the regions -- that is, the senior officers on the regions -- as to what matters they thought might receive study, and we have received a sufficient number of replies to indicate that there are items that are well worth study. Now, just as soon as we can get around to it we will pro-

pose to go into those matters, and also to clean up the sheet of unfinished business.

Q. Now; there are two other items there that I want to ask you about, to see if you can advise us in regard to them. One is the C.N.R. and C.P.R. telegraph companies, consolidation of commercial telegraph companies. Was that study proceeded with to any degree at the time?

A. Oh, yes, that went a very considerable distance. It actually went to the point of introducing enabling legislation, and that enabling legislation was withdrawn, as I recall it. A very complete study was made of the matter.

Q. And was it found that it possibly would lead to economies?

A. There is no doubt that on paper you would get substantial economies.

COMMISSIONER INNIS: Q. Why was it withdrawn?

A. Well, I think part of it was, sir, that there was such a public opposition to it. The public had a very lively appreciation of the value of competition.

MR BRAZIER: Q. Was there specific opposition from outside parties to the legislation when it was introduced?

A. Well, remember, now, I am speaking very generally and from memory. It is my recollection that there was a very considerable body of public opinion opposed to the idea.

Q. How long ago was that, Mr. Fairweather

A. Oh, it was before the war.

Q. During the depression years, was it?

A. It was sometime in the thirties, I do not know just when.

Q. The two telegraph companies did adopt some joint

economies, though, did they not?

A. Oh, yes.

Q. Advertising and things of that nature?

A. Oh, yes, and so have the railways too. Every once in a while we find it possible to effect an economy by one means or another, and it is proceeded with, that economy is proceeded with. Little by little they add up to a fairly substantial amount, and they are not included in this \$1,189,000.

Q. Would the situation be about the same for the next item on that list, the express companies, consolidation of the express departments?

A. Well, the consolidation of the express departments was studied too, and there we got into a difference in policy between the two systems. The Canadian Pacific, as I understand, uses the express department to some extent to meet highway competition in freight service; the Canadian National does not. That made it a bit difficult to deal with the matter. Then there was the over-all consideration also as to the public interest involved, and whether the economies that you got on paper would really be economies when you---

Q. There were not the obvious economies, I presume, there that there was in the telegraph?

A. On paper there would be a fairly substantial economy, but the working of it out was a very difficult problem.

Q. Now, just one last subject I have to ask you about, Mr. Fairweather. You heard my discussion this morning with Mr. Armstrong regarding your position in the city of Vancouver, the port of Vancouver?

A. Yes.

Q. I understand from conversation with you a few days

that you personally are not in favour of joint terminals if they can be avoided; is that correctly stating your own opinion?

A. Well, now, that needs a little clarification. We have joint terminal operations at many points, some of them under the co-operative arrangement and some of them worked out long before co-operation. What I was referring to was the idea that you could create a terminal company which would receive the traffic from the road haul companies and do all of the terminal operations. That sort of arrangement I do not think to be very practicable. It has been discussed many times in the United States as applied to large cities there, and the idea has always failed to carry conviction.

Q. What other method is there of dealing with the situation?

A. What situation?

Q. Of providing joint operation at a terminal such as that?

A. Well, where there is a joint interest I think that the common sense of the railways may be used. Now, for instance, in Montreal we have an area in a highly industrialized section of the city, where each railway has rights to go in over that piece of track and serve industry. If we each tried to send our switch engines in there it would be confusion confounded, so we make an arrangement and we say, now, one company will do the switching in that particular territory.

Then we have another territory which is somewhat similar, and we look into the situation there and we say, well, the Canadian National is doing the switching in zone A, the Canadian Pacific will do the switching in zone B and render an accounting for same, so that by that means the

shippers and receivers get better service and we get more economical operation. But that is vastly different from creating a terminal company into which all the traffic is poured like you would pour water into a jug and then it is poured out again, and in which the railways as such lose all interest in the identity of their traffic.

Q. That is the main feature that you are opposed to having in a joint company?

A. Well, using the term "opposed" is perhaps not quite correct.

Q. Well, which you look on with disfavour, then

A. I have grave doubts about it. I do not believe that the end result justifies setting up the machinery, because to set up such a terminal company you have got to set up a management organization, it is out of contact with the people that it is serving, and the railways then are in the position that they are sort of left up in the air and you have got a hiatus, and the terminal company's interests are going naturally to turn on their particular point of view, but the railways' interests will be from the point of view of the entire system, and it often pays a railway to put up with expensive terminal operation, because they can do a much better job in the rest of their system. Now, the terminal company segregated and off by itself is not in that position. You take even down in Toronto, where the railways have a very fine arrangement for a union terminal; each company has its own facilities for handling its own traffic. We did not trust it to a terminal company, because we wanted to have complete control, and if we did not have complete control it would show up in inefficiency, lost time and things like that. Consequently, you go down to Toronto and you find a coach yard C.N. and a coach yard C.P., and I think it is efficient. I do not think it would

be desirable to have one joint coach yard.

Q. Do you think that the same sort of plan could be worked out at Vancouver?

A. Which?

Q. The same sort of plan as you have in Toronto?

A. Well, of course, in Vancouver the Canadian National passenger service is not of very great order. We have only got a couple of trains a day, and we very seriously looked at the possibility of taking those trains into the Canadian Pacific Station. It turned out that it was not feasible. As I recall it -- it is a long while ago now -- by the time we put the additional capital in additional facilities to enable it to be done, you did not have any net economy. The Canadian Pacific coach yard, as I recall it, was too small to handle our business, and so we had to be content to stay where we were.

(Recess)

MR BRAZIER: Q. Just one or two more questions. Is it a fact, Mr. Fairweather, that, due to the fact that the C.P.R. was first into Vancouver, and thereby gained the right of way along the shore line both in Burrard Inlet and the north bank of the Fraser River, the Canadian National has a difficult terminal problem in Vancouver?

A. Well, I can say this, that the Canadian Pacific had a most fortunate opportunity, being first in the field, and when the Canadian Northern Railway came along they had a rather difficult situation to face. They solved it, to my way of thinking, rather well; that is, they did not squander money in trying to force a very expensive entrance into Vancouver. They took running rights over the Great Northern, running rights over the bridge across the Fraser

River, and they established their main yard out at Port Mann, and they established a local yard in the False Creek area.

Q. You still have difficulty in delivering your freight to the waterfront itself?

A. No, I would not say we have difficulty. We reach the waterfront through an interchange with the National Harbour Board, which in turn has ^a running rights agreement over the Great Northern. Then when they do reach the waterfront some of the industries and wharves on the waterfront are served by the Harbour Commission Railway and some are served by the C.P. If the traffic is destined to a C.P. facility it is handed over by the National Harbour Board Railway to the Canadian Pacific for final delivery.

Q. I am instructed, Mr. Fairweather, that there are times when certain freight has to be handled by four railways there, the fourth being the B. C. Electric?

A. Well, that is conceivable; the B. C. Electric might be in the picture.

Q. Would you say the Canadian National is satisfied with its situation in Vancouver?

A. Well, the Canadian National is never satisfied with any situation, but we make the best of the circumstances as they are. The Vancouver situation is one that has engaged attention for many years, and I hope that---

THE CHAIRMAN: Q. Well, is there any case there of a lack of willingness by the Canadian National and the Canadian Pacific to co-operate? -- because that is the statute we are dealing with.

A. Well, the interchange arrangements are all standard. Now, I do not think that the Canadian National has ever applied to the Canadian Pacific for running rights in the Vancouver area that would allow us to handle our

traffic with our own engines to points on Canadian Pacific trackage, but there is an interchange arrangement, and under that interchange arrangement traffic moves. In the terminal area at Vancouver you have the Canadian Pacific, the Canadian National, the B. C. Electric, the Great Northern, the Harbour Commissioners Railways and the Pacific Great Eastern; they are all operating in that terminal area. They operate under a set of interchange arrangements that have been worked out over the years.

THE CHAIRMAN: Are you trying to show a lack of co-operation under the statute?

MR BRAZIER: As I pointed out this morning, my lord, these matters are things that for an outsider to pass any judgment on is almost impossible, because the facts and the possible economies are so much within the knowledge of the railways and not anyone else. This project has been suggested in Vancouver from time to time, principally by the late Senator McGeer, as one method whereby the railways could effect some economies.

THE CHAIRMAN: Now, if these two railways could effect economies by doing something, why don't they do it?

MR BRAZIER: That I am just trying to explore and find out if there was any---

THE CHAIRMAN: Q. Is it a fact that in your opinion they could effect economies by getting together? I just refer to the two railways---

A. The Canadian National and Canadian Pacific Railways?

Q. That is it.

A. If they made a joint terminal in---

Q. Is there anything they could do there which would effect economy?

A. The matter was studied to some extent and, as I

recall it, the conclusion arrived at was that you would have to spend a lot of capital before you could---

Q. That would be positive capital this time?

A. Yes, this would be positive capital -- to make joint operation feasible. You see, the Canadian National comes into this area from Port Mann and New Westminster and approaches the whole of the Vancouver Terminal from the south side. The Canadian Pacific approaches the terminal from the north side of the Fraser, and their main facilities are down along Burrard Inlet, and it is a complicated problem. There is no easy connection between the Canadian Pacific and the Canadian National main lines, and you would have to go away back to -- where is the first bridge over the Fraser? Mission, you would have to go back to Mission and bring the Canadian National in to the north side of the river and come in on that side, the north side, if you desired to use the Canadian Pacific terminal facilities as the main hub. Well, if you poured our traffic on top of the Canadian Pacific traffic through on that line and in their terminals you would have a bottleneck right then and there, and you would have to enlarge your facilities very greatly. Moreover, the Canadian Pacific line from the head of Burrard Inlet down to their terminal facilities hugs under the side of the cliff. It would be very expensive to enlarge it, and I do not think it has got capacity to handle the joint business, so it is not an easy problem, sir, by any manner of means. Speaking for the Canadian National, we certainly intend to bend every endeavour to keep our terminal facilities adjusted to the needs of a growing Vancouver, but I would not say, sir, that you could make a case for large economies from such a large joint terminal venture as has been suggested.

COMMISSIONER INNIS: Q. Still, the expenditure of a large amount of capital might bring economies?

A. Yes, but, you see, sir, the expenditure of a similar amount of capital by the two companies independently would also produce economies, and that is the trouble. When you take a look at what is the best in the light of all the circumstances, it is none too clear.

THE CHAIRMAN: All right, Mr. Brazier.

MR BRAZIER: Q. Just one last question, Mr. Fairweather. In your approach to these co-operative projects have you felt it important that the competitive position of each railway be maintained?

A. Well, of course, in a good many of these co-operative ventures you put an end to competition to the extent that you co-operate; there is no doubt about that. If one line pulls out of a territory and abandons it to another, then there is no thought of any continuing competition in that particular field except this broad market competition that I spoke of earlier; and when you pool a substantial section of your revenues, then you also to that extent must take a realistic attitude and acknowledge that there has been some reduction in competition. As I see it, the test is this -- whether the competition is truly wasteful, and there a very large element of judgment must enter the picture. It is easy enough to define the extremes. For instance, I think everybody would admit that when you have a service like the passenger service, which just barely carries itself, if it succeeds in doing that, and if the two railways strive for competitive advantage in a field like this, it is very difficult, to my way of thinking, to call that anything except wasteful.

THE CHAIRMAN: Q. Didn't we have an instance the other day of what Mr. Brazier is speaking of? We were told

that in a certain locality the Canadian National might well abandon a line, but they are waiting till the C.P.R. can make a similar sacrifice in another locality before the two abandonments become effective.

A. Do you think that would be wasteful, sir?

Q. No, I do not say that. I am just saying, doesn't that illustrate the fact that there is an attempt to balance up these and therefore keep your general competition in mind?

A. Well, of course, that is undoubtedly true in that sense.

THE CHAIRMAN: What is that case again?

MR O'DONNELL: Bala.

THE WITNESS: It is from Bala to Wanup.

THE CHAIRMAN: Q. Well, the case is about as I have put it, is it not? You are waiting there until the other railway can find a similar abandonment to make some place before your abandonment becomes effective?

A. Well, in that particular case, sir---

THE CHAIRMAN: Isn't that what we were talking about, Mr. O'Donnell?

MR O'DONNELL: That is the case on page 135, but I think Mr. Fairweather has some views on that, possibly.

THE CHAIRMAN: The thought crossed my mind that it was an example of what Mr. Brazier is talking about.

MR O'DONNELL: Yes, my lord.

THE CHAIRMAN: Of a desire of each railway to remain in a position towards the other which would not be disadvantageous. You say page 135 of your brief?

MR O'DONNELL: No, the C.P.R. brief, my lord. It is the sixth case on the page, Bala Park-Wanup, Ontario.

MR BRAZIER: It is the abandonment of 141.2 miles of line.

THE CHAIRMAN: I understood the other day that the Canadian National could abandon 141.2 miles of line, each company using remaining line in territory jointly, but this is held up because the C.P.R. has not yet found a place to make a similar abandonment.

THE WITNESS: That particular line, sir, will never be abandoned.

THE CHAIRMAN: Q. Your line?

A. No. We examined this situation during the depression---

Q. Pardon me; I did not give you the whole quotation. It was held up before the war?

A. Yes.

Q. And then the war removed the necessity for the abandonment or increased the traffic?

A. Well, no. It demonstrated the vital importance of that line as a strategic line, so that under no conceivable circumstances would that line be abandoned.

Q. So then the idea of abandoning it has now been abandoned?

A. Oh, yes. That line will never be abandoned, sir.

Q. I see it is under a heading here which says "Projects Recommended but not proceeded with." It is altogether out now?

A. Well, that is the technical position, but certainly in the review of co-operative matters that line will be taken out and acknowledged as being a vital part of Canada's railway needs under a state of emergency. I do not know what would have happened to this country if that line had been abandoned during the war.

MR O'DONNELL: The situation has changed since that recommendation was made; that is your point.

THE CHAIRMAN: Q. Anyhow, the situation as it

existed before the war did illustrate the fact that the two companies are anxious to see that any sacrifice made by the one is balanced by a similar sacrifice made by the other?

A. That is quite true, because, as I said, your organization with which you operate the property is a living, a vital thing, and if you kick it around too much you lose more than you gain.

MR BRAZIER: Q. And that same principle would apply today if there were abandonments of the C.N.R. which were considered proper under the Act; you would wait until the C.P.R. found a---

A. I do not think necessarily, no. I think it is one of those managerial problems that would have to receive consideration. Certainly it would be a desirable thing, but I would not go so far as to---

Q. You mean desirable to wait until the C.P.R. had a similar---

A. It would be desirable to try and find some matching illustration on the other side, but if the economy was substantial and the need was great enough, well, the managerial difficulties in making a unilateral abandonment would be set aside and the abandonment would be proceeded with.

Q. You speak of managerial difficulties of making a unilateral abandonment; what are those difficulties, Mr. Fairweather?

A. Well, if you were managing even a small section of the property you would very soon find out what they were. I spoke of esprit de corps. Now, how can you maintain esprit de corps among men who are only interested in their local point of view, when you proceed to take action that from their standpoint and their limited point of view is

inimical to the interests of the company for which they are working, to say nothing of the fact that it affects them personally?

Q. Would you say, then, that the senior management of the railway would give greater consideration to their claims for remaining an operating part of the railway rather than the over-all picture?

A. No, I did not say that. I said it is a matter which might very properly receive managerial consideration, but you would have to balance it up, and if the economy was small and the damage to the morale was large, then you would say the game is not worth the candle. On the other hand, if the economy was large and the damage to morale was estimated as relatively insignificant, you would say, go ahead with the abandonment.

Q. Well, those are the factors which you mention as managerial difficulties, do you?

A. Yes.

Q. In making the abandonment?

A. Yes.

Q. Thank you, Mr. Fairweather.

EXAMINED BY MR COVERT:

Q. Mr. Fairweather, do you think that the railways have done a good job under this C.N.-C.P. Act?

A. Well, they have done a fairly successful job so far as they went under the circumstances as they existed. I am not saying that it might not have been bigger at all; it might have been larger.

Q. You think that perhaps there might have been more economies effected?

A. Well, I have said that I believe that there are opportunities for co-operative economies beyond those that

are now in effect.

Q. If the war had not intervened, and if all your problems had not arisen, the post-war problems, you perhaps would have effected further economies?

A. I think that would be a logical assumption.

Q. What I wanted to find out was, prior to the advent of the war -- which I think everybody perhaps will accept was a reason for the ceasing of these co-operative measures -- prior to the advent of the war, do you think that the railways did a good job under the Act?

A. Well, it is a long, long while now, and my views are to be found in extenso in the Senate investigation. Frankly, I do not feel that I can add anything to that evidence, nor can I repeat that evidence in detail now.

Q. I did not want you to do that; but you think you cannot answer that easily? You would have to refresh your memory to find out whether they had done a good job prior to the war?

A. All I can say is that what we accomplished is recorded in the Senate investigation, and it is recorded in the reports of the Canadian National Railway, and the Senate at least had an opinion about it in their report, which was read here.

THE CHAIRMAN: Well, that was a long time ago.

THE WITNESS: That was a long time ago.

THE CHAIRMAN: Q. Has there been no Senate or other Parliamentary examination made since then?

A. No, sir, not since then.

MR COVERT: Q. I think back in 1932, Mr. Fairweather, you felt that savings up to as high as \$30 million could be made?

A. Well, of course, that needs a qualification. What that \$30 million referred to were economies that would be

possible if you were prepared to do the sort of things that were contemplated in a parliamentary proposal of unification.

Q. I see.

A. That is, if you wish to sit down with a pencil and paper and figure out all the things that are theoretically possible, assuming, as I said at that time, that you have a docile public and a helpless and docile staff of employees, you can do all sorts of things on paper, but when you translate them into reality something else happens. The \$30 million has to be viewed as against a background of a purely theoretical picture of what might be under some set of premises.

THE CHAIRMAN: Q. Well, in the theory in question was this \$30 million a yearly figure?

A. Oh, yes; but I say again, sir, it has to be viewed against a set of premises that were designed to encompass an estimate I think of \$70 million a year.

Q. Did that arise out of the proposed unification?

A. It was all part and parcel of the argument at that time, sir, yes.

MR COVERT: Q. You see, we are called upon to report what has been done and whether or not any amendment should be made. Now---

THE CHAIRMAN: Pardon me, Mr. Covert, right there.

Q. Was that Act in fact in force at that time

MR COVERT: No; that Act was a result of the Duff Report. I am referring to the evidence which Mr. Fairweather gave to the Duff Commission.

MR O'DONNELL: The Senate Committee was a lot lower estimate than that, in 1938.

MR COVERT: Q. What I wanted to find out, Mr. Fairweather, was if we could obtain your view as to whether

or not there had been real co-operation between the two railways, and whether or not in your view they had done what could be expected to be done?

A. Well, I can only repeat what I have already said.

Q. You cannot answer me Yes or No on that?

A. I would prefer not.

Q. The Canadian Pacific have intimated that they have a survey under way now; has the Canadian National a similar survey?

A. We have a survey under way.

THE CHAIRMAN: Q. Is it a joint survey?

A. No, sir; this is a survey by the senior regional officers of the Canadian National as to what prospects they see of further joint co-operative economies.

Q. And the C.P.R. are doing the same thing.

MR O'DONNELL: That is what they say.

THE WITNESS: With that information, together with the headquarters point of view, we would guide our approach to the general study of co-operative measures.

MR COVERT: Q. You say that you think substantial economies are still possible in the future. I wondered if you had any particular examples in mind, of which you could just give us a few?

A. Well, I already mentioned this manifesting of freight to save excessive haul. I think that is one. I think that there may be opportunities to do something with passenger train pooling, and I think that---

THE CHAIRMAN: Q. Did you say excessive hauls?

A. Excessive haul, h-a-u-l. A very good illustration is that the Canadian National distance from Edmonton to Vancouver is less than the Canadian Pacific distance from Edmonton to Vancouver, and the Canadian National distance from Calgary to Vancouver is greater than the Canadian

Pacific distance from Calgary to Vancouver. Now---

Q. Is that because you go back from Calgary to Edmonton and then west?

A. Yes. We use different passes through the mountains. Now, it should be possible to work out some arrangement where we would each make our route available to the other where it was economical. Then, as I say, passenger train pooling in my opinion is well worth study. There are some line abandonments that should be looked into and reviewed, and I think when we go over it with a fine-tooth comb we will find a fairly substantial amount of economy.

Q. Now, Mr. Fairweather, those things would take considerable study?

A. Oh, yes.

Q. And perhaps quite a long while to bring about?

A. Certainly it is not something done over night.

THE CHAIRMAN: Q. Those are the things, some of the things, that you are studying now?

A. That we propose to study, sir. We are not studying anything at the moment.

MR COVERT: Q. What I wanted to find out was whether or not you thought it was feasible under those circumstances that these matters should be brought before the Board of Transport Commissioners in a freight rate case to determine whether or not you had effected all the economies that you should before they could grant a freight rate increase?

A. Well, I really do not know. I would hope that the railway will accomplish many economies, or as much economy as is reasonable, all things considered, under the provisions of the Canadian National-Canadian Pacific Act. Now, if they do not, well, I think that certainly the situation might be

examined into. Whether it should be examined into as part of a rate case, I cannot quite see why it should, in a particular rate case. I see it as part of the broad problem of dealing with the railways of the country. It is one of the managerial problems, and as such it should receive attention. It is by no means the biggest. The biggest thing that there is in the country is this highway competition that I have been mentioning.

(Page 21257 follows)

Q. Now, Mr. Fairweather, what I really wanted to find out in that connection was whether or not you say that the managerial functions involved are such; I wanted to find out if in your opinion assessments of these matters could be made quickly by people other than railway employees?

A. That was why I was hesitating, because it is bad enough inside the railway where one party knows all the facts with regard to his own railway and has some knowledge or is able to appreciate the situation on the other railway; but if you took somebody from outside and tried to look at the matter it would take several years before they could have such a body of information with regard to the railways that they could make an intelligent study. It is not an easy job by any manner of means.

Q. Now, Mr. Fairweather, supposing you had the onus upon you of coming before the Board of Transport Commissioners and saying:- "Well, now, the Canadian National Railways have effected all the economies that they could through co-operation under the C.N.- C.P. Act", and you were asked to show that, would it be a practical thing for you to do?

A. To show what we had accomplished and what studies we had made?

Q. What you had accomplished and whether you had done all you could do.

A. Well, I wouldn't think that would be a very onerous job.

Q. It would not?

A. No.

Q. To show both what you had done?

A. If they would accept my authority. If they would not accept my authority, it might be a terrible thing. If they would accept my authority to say that this is what we have done, this is what we believe might be accomplished but it has not yet been accomplished, why, that is fairly simple; but if they expressed differences of opinion with me and desired to study the thing, then it would take a long long while and I don't think these people would be competent to do it. I remember in one case we got into an awful snarl with a man who thought he knew as much about railway operation as he knew about coal mining, and he undertook to tell us how we should operate trains and he caused us a lot of trouble, because we had to be polite to him because he was a shipper.

COMMISSIONER INNIS: Or more polite, you mean?

A. Service with courtesy.

MR. COVERT: Q. This is the last question I want to ask you. I suppose that what might seem to result in economy at one time, that the situation might rapidly change with the changing economy?

A. Decidedly, that is possible.

THE CHAIRMAN: Would you think it would be in the case of that Bala-Wanup line?

A. That is an outstanding instance.

Q. It would be a big case where there is one hundred and forty miles of line involved.

A. It would have been nothing short of disaster if that line had been abandoned.

MR. COVERT: Mr. Chairman, that is all I have. Mr. MacPherson tells me he would like to make a statement.

COMMISSIONER INNIS: I would like to ask a few questions before Mr. MacPherson. This does not refer particularly to what you have been saying about C.N.-C.P. co-operation, but I think you made a suggestion at one point (in fact Dr. Angus referred to it) that there was a danger of the railways pressing themselves out of the market by higher rates?

A. Yes.

Q. How quickly could you determine whether that was happening?

A. I think it would be very difficult to determine it with any degree of precision. The reason I could not answer, I did say that owing to the warping that has taken place in the rate structure, there are costs being transferred to marginal producers, that is, transportation costs, which they would not have to bear when all that you were curing was the effect of inflation. You might infer that because his product went up, the value proportionate to the inflation, that therefore he could stand an increase in the rate. That would be true, but what is happening in this country and what is happening in the United States is something that is very much worse than that, that you have a situation where the tapered rate structure which was so essential to the development of this country is being warped, and it is because you have to meet the overall position and you cannot get your net revenues in the short haul and high valued field on account of highway competition; you necessarily have to load that on the marginal producer, and that is the deadly part of this situation. Now, it was because I knew that that process was going on that I felt there was danger of interfering with the productive

economy of the country.

Q. You have no indicators which would tell you with any sensitiveness whether the rates were too high or whether they were too low?

A. No, no statistical indicators, sir; but I am, as I say, head of our development section and I therefore come in contact with new industry, and these new industries are almost invariably marginal producers, at least initially, and I know the difficulty we are having in that regard. Freight rates as applied to these people are very very important, and when I see these freight rates loaded with the by-effect of this uneconomic situation, highway vs. railway, I get very much concerned.

Q. One other minor point, and it arises out of your proposals about capital revision. With the present capital structure, the necessity of appearing before Parliament with regard to debts and so on, I presume you spend a great deal of the energy of the Canadian National towards sweetening the public or Parliament in order to get these estimates through?

A. I don't think we do. I think there is no - -

Q. Perhaps it is not a fair question?

A. It is a perfectly fair question, if such sweetening was going on.

Q. But it would not be your particular field?

A. Yes, it would be my field. I would have knowledge of that for years and years. I was the person who was the Chief Staff Officer at the Railway Committee, and therefore I have knowledge of this situation. No, we never attempt to sweeten our appearance before Parliament.

Q. Dpn't you think you should?

A. I don't know how we could. If you will give us our recapitalization I think we would sweeten the picture.

Q. That is the point. Does the recapitalization mean that you will no longer have to pay attention to public opinion which you must do now?

A. No, I think actually our public relations are undoubtedly influenced adversely by our large deficit position. Now, that would be sweetened if we had a readjustment, but we do not make any attempt to condition Parliament to the acceptance of our deficit, if that is what you mean.

THE CHAIRMAN: Now, Mr. MacPherson.

MR. MacPHERSON: Yes, my lord, all that I propose to do is this. I spoke to Mr. Covert about it. At Regina there was a submission made by the Saskatchewan Coal Operators, as the Commission may remember.

THE CHAIRMAN: Yes, I remember it.

MR. MacPHERSON: And I had a letter from Mr. Lynd from Estevan who finds it impossible to come down here himself, and he asked me to speak to it, and I only propose taking five minutes in doing so at the opening of argument, not taking it as part of the Provincial Brief at all.

THE CHAIRMAN: You are through with Mr. Fairweather? Well, we thank you, Mr. Fairweather. Then, will tomorrow morning do for you?

MR. MacPHERSON: Whatever your lordship wishes.

THE CHAIRMAN: That will be the opening of argument. Very well.

--At 4:50 p.m. the Commission
adjourned to meet 10:30 a.m.
tomorrow, May 2nd, 1950.

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